

General Terms and Conditions of Business of Novosystems GmbH, Seevetal, Germany

1. Exclusive Applicability and Acceptance of our General Terms and Conditions of Business

All our offers/quotations are based on our General Terms and Conditions of Business. We accept orders only subject to these T&C's. General Terms and Conditions of Business of the Buyer or other rules of the Buyer that differ from our GTCB are only binding for us if we expressly accept them in writing.

2. Offers/Quotations – Collateral Agreements – Contract Content – Data – Data Processing

- 2.1 Our offers/quotations are non-binding in that a contract is not concluded until we have accepted the order.
- 2.2 Collateral agreements to our offers/quotations and order acknowledgements and agreements made with our field staff require our confirmation in order to be valid.
- 2.3 In cases of doubt, our written order acknowledgment shall be exclusively decisive for the contract content.
- 2.4 Technical documents and data on mass, weight, capacity/performance, operating cost or the like are only approximate specifications as an integral part of our offers/quotations, order acceptance/acknowledgment; they are only binding for us if such is expressly agreed in writing. Data on percentage and mix ratio of our products are only approximate mean values unless they are expressly stated as being binding.
- 2.5 We reserve ownership and copyright in respect of our cost estimates and other offer/quotation or contract documents. These documents may not be made accessible to a third party and must be returned to us without delay on request.
- 2.6 The Buyer is aware that we electronically store the data provided by him and the data on the execution of contracts. He herewith gives his consent.

3. Right of Contract Rescission

We have the right to rescind the contract if its execution is hindered by difficulties that are insurmountable or can only be overcome with an expenditure that is disproportionately high compared to the value of our deliverables and exceeds the limit of reasonableness. Claims for damages are excluded in such cases.

4. Prices

- 4.1 Unless otherwise agreed, our prices are ex works delivery including packaging, excluding carriage, and for all deliverables exclusive of insurance and VAT. We always charge VAT additionally at the rate applicable on the day of the performance.
- 4.2 The agreed prices are based on the labour, material and energy costs applicable at contract conclusion. If such costs increase prior to delivery, we shall be entitled to charge a price that is correspondingly higher in proportion to the percentage of these costs in the agreed price.

5. Insurance – Shipping – Passing of Risk – Taking back of Packaging

- 5.1 We deliver ex works or ex warehouse. The goods are deemed to be delivered when they leave the factory or warehouse.
- 5.2 If we do not receive specific shipping instructions, we will ship the goods using the shipping method we deem to be the cheapest. Consignments are only insured by us if the Buyer expressly requests such insurance and then only at his expense.
- 5.3 The risk of accidental perishing or loss of the goods passes to the Buyer upon delivery; this also applies when we transport the goods with our own vehicle or when we pay for the transport cost. The risk passes to the Buyer upon the ready for shipping notification if we are ready to deliver and the delivery is delayed for reasons for which the Buyer is responsible.
- 5.4 To the extent that we are obliged to take back packaging pursuant to the Packaging Ordinance, the Buyer bears the cost of the return transport of the used packaging.

6. Delivery/Performance Periods and Dates

- 6.1 Periods and dates agreed for our deliveries are only approximations; they are only binding if they have been expressly agreed in writing.
- 6.2 If the delivery is delayed due to circumstances that are beyond our control and for which the Buyer is not to blame, particularly such caused by act of God, governmental intervention, industrial action, material procurement difficulties or production stoppages, the delivery period/date shall be extended/postponed by the duration of the hindrance; this also applies for delays occurring because we have not been supplied correctly or timely without fault on our part. If such circumstances arise after we are in default of delivery, the default consequences shall be excluded for the duration of their effectiveness. Each party to the contract can rescind the contract if the delay continues for more than two months. Claims for damages are excluded.
- 6.3 If the Buyer is to blame for the delivery delay, for example, because he did not timely create the delivery preconditions for which he is responsible, we shall be entitled to give him a reasonable period of grace of at least four weeks, and, if the Buyer does not remove the hindrance within this grace period, at our discretion either rescind the contract, store the goods at our premises or elsewhere at Buyer's expense or otherwise dispose of the goods and then deliver within a reasonably extended period of time. If the goods are stored at our premises, the Buyer shall pay us for such storage at least 0.5% of the invoice amount for the stored goods per month. Notwithstanding the aforementioned, we shall also be entitled to compensation for the loss incurred by us due to the delay and in the case of contract rescission additionally damages for non-performance.
- 6.4 If we are in default of delivery, the Buyer shall be entitled to rescind the contract provided that he has given us a period of grace reasonable for the contract content and of at least four weeks and the goods have not been delivered within this grace period.
- 6.5 The Buyer cannot derive any claims for damages against us based on an exceeding of the delivery period/date or default in delivery unless such was due to an intentional act or gross negligence on the part of one of our legal representatives or vicarious agents.

7. Call-off Order – Goods Division – Part Performance

- 7.1 In the case of call-off orders, the goods shall be taken at about identical monthly quantities unless otherwise agreed. The entire order quantity shall be deemed to be called-off one month after the expiry of the period agreed for the call-off, or twelve months after contract conclusion falling such an agreement.
- 7.2 If the Buyer does not divide the ordered goods into call-off quantities, as he is obliged to do, within one month after the expiry of the time period agreed for the division, or one month after our demand failing such an agreement, we shall be entitled to divide the goods and deliver at our discretion; alternatively, we shall be entitled to rescind the contract.
- 7.3 We are entitled to make part deliveries and to invoice for each part delivery separately.
- 7.4 We reserve the right to make excess or shortage deliveries as a result of technical recipe factors of up to 10% of the ordered quantity.

8. Violation of Third-Party Rights

We shall not assume any liability for a violation of third-party rights, particularly third-party copyrights or industrial property rights, as a result of a delivery that we have to make on the basis of documents provided by the Buyer. The Buyer shall indemnify us against all adverse consequences arising from such violations of third-party rights.

9. Payment

- 9.1 Our invoices shall be paid without deduction within the payment period shown on the invoice. Early payment discount may only be deducted/retained at the level and subject to the conditions stated on the invoice. Advance interest on prepayments will not be paid.
- 9.2 If we become aware of circumstances that make the Buyer's creditworthiness or solvency questionable after contract conclusion, we shall be entitled, at our discretion, to set aside all payment terms and demand either payment in advance or provision of security. The same applies if the Buyer does not fulfil one of his payment obligations towards us when payment is due. In such a case, all our claims against the Buyer, even from other transactions, will become simultaneously immediately due; if we have accepted a bill of exchange that is not yet due, we shall be entitled to demand immediate payment against the return of the bill.
- 9.3 If the Buyer does not pay when payment is due, we shall be entitled, regardless of whether default exists, to charge interest at 6 percentage points above the respective base lending rate as from the due date. We reserve the right to claim a higher default loss.
- 9.4 When we accept cheques or bills, this is always only on account of payment and never in lieu of performance. In such cases we are not obliged to make timely presentation or protest. The cost of discounting, taxation and collection shall be borne by the Buyer; he shall recompense us for these amounts immediately on request.
- 9.5 The Buyer is not entitled to offset against our payment claims or exercise a retention right on due amounts. This does not apply after we have stopped payment, nor for a set-off of undisputed or res judicata claims and the exercise of a retention right until the settlement of such claims.

10. Material Defects

- 10.1 We supply the ordered goods in merchantable quality. Warranties of any type require an express written agreement in order to be valid. If we have sold on an approval or inspection basis (according to sample/specimen), the properties of the sample or specimen are not deemed to be automatically warranted.
- 10.2 Customary or slight deviations in quality, colour, weight, features or design that would only be avoidable with unreasonable technical expenditure are not defects in quality. Apart from this restriction, our warranty covers manufacturing and material defects that make the supplied goods unusable or impair their usability to a not insignificant extent within twelve months of the passing of risk. This does not apply if longer periods are mandatory by law, particularly for defects in goods that were used, in accordance with their intended purpose, for a building or construction, and caused its defectiveness.
- 10.3 If the goods to be supplied by us, consist of several parts, defects in one part of the goods do not justify a complaint about all the goods to be delivered.

10.4 A precondition for claims based on defects is that the Buyer notifies us in writing of the defect without delay and not later than ten days. This period starts immediately upon the receipt of the goods if the defects can be easily identified immediately after their receipt by the Buyer or the recipient stipulated by the Buyer by an inspection that is useful for a proper business operation; in the case of other (hidden) defects, the period starts upon their detection.

10.5 If we are liable for defects in the supplied goods, it is at our discretion to opt for free-of-charge replacement, repair or crediting of the invoice value of the defective goods. A precondition for such is the return of the defective goods by the Buyer at our expense. If we fail to exercise our option right within ten days of the return of the goods, the Buyer can give us an adequate period of grace of not less than four weeks and, after the fruitless expiry of this period and at his discretion, demand a reduction in the purchase price or rescind the contract.

10.6 If the defect constitutes a quantity shortage, we only need to effect additional delivery. A precondition for our additional supply obligation is that the Buyer ascertains the gross and net weights of the goods immediately upon the receipt of the goods and sends us copy of the delivery note and transport documents.

10.7 The Buyer has no rights going beyond those stipulated above or cannot claim for damages based on breach of our duties as per item 10.5 or based on consequential damage/loss caused by the defect unless the defect or the breach of duty was due to an intentional act or gross negligence by one of our legal representatives or vicarious agents. In the case of strict liability arising, for example, from a guarantee given by us, we are only liable for consequential damage/loss to the extent that the purpose of the guarantee was to safeguard the Buyer against the damage/loss incurred.

11. Breach of Precontractual Duties and Ancillary Duties – Product Liability

11.1 We are only liable for the consequences of defects/errors arising in the course of the contractual negotiations, particularly for the consequences of insufficient or incorrect advice given to the Buyer if such consequences are due to an intentional act or gross negligence by one of our legal representatives or vicarious agents.

11.2 Item 11.1 analogously applies for disadvantages suffered by the Buyer due to our breach of contractual ancillary duties such as a consultancy or safeguarding duty.

11.3 If a damage/loss arises from a risk inherent in our goods, regardless of whether this risk is due to a defect in the goods or is associated with their contract-compliant condition, or if a damage/loss arises from a lack of sufficient warning of the risk, the aggrieved party cannot assert a claim for damages against us as a result, unless one of our legal representatives or a person who acts as our vicarious agent in terms of a contractual liability, caused the damage/loss due to an intentional act or gross negligence.

12. Reservation of Ownership

12.1 We reserve ownership of the goods supplied by us until full settlement of all our claims, including current/revolving accounts, arising from the business relationship with the Buyer. If we accepted bills of exchange or cheques, our associated claim is only deemed to be settled upon their redemption / encashment. If we incur a new commitment/debt or a new liability risk in connection with the payment of goods supplied by us, for example through an inverted or acceptor's bill of exchange in a cheque/bill process, the new commitment/debt or liability risk becomes part of our claims arising from the business relationship within the meaning of subsection 1 until the discharge of which the goods remain our property.

12.2 The Buyer may sell the reserved ownership goods, even after combination with other goods, within the scope of a proper business transaction but may not, under any circumstances, pledge them or assign them as security. A sale within the scope of a proper business transaction means that the Buyer must also reserve ownership of the goods until payment for the goods by his customer and that there is no hindrance in the transfer of his claims arising from the resale, to us, like, for example, an exclusion of such transfer of a claim by his customer. The Buyer's authority to resell expires when he stops payment, when he is ordered by a court to disclose his assets and liabilities, when an application for the opening of insolvency proceedings over his assets has been filed, when he endeavours to reach an out-of-court composition or when we rightfully demand the surrender of the reserved ownership goods.

A pledging of reserved ownership goods must be immediately notified to us by the Buyer stating the particulars of the pledge.

12.3 If the Buyer defaults in payment of a debt, in whole or in part, that is secured by the reservation of ownership or if his financial situation significantly worsens, we can demand the surrender of the reserved ownership goods without first notifying the rescission of the contract or first setting a time limit for meeting the payment obligation. The continuance of the contract and the Buyer's obligations remain unaffected by such a demand and surrender.

12.4 All accounts receivable of the Buyer arising from the resale of goods owned or co-owned by us are assigned to us upon conclusion of the sale transaction regardless of whether the goods are sold to one or several customers. If the sold goods are not solely owned by us or are sold together with goods not owned by us, the assignment of the counter-claim only covers the invoice value of our goods.

The Buyer may collect the assigned accounts receivable but not assign them, even for factoring. We are entitled to cancel this authorisation if the Buyer does not timely fulfil one of the above obligations towards us or if we become aware of circumstances that appear to endanger our rights. The collection authorisation of the Buyer is automatically cancelled upon occurrence of one of the circumstances mentioned in item 12.2, 1st paragraph, 3rd sentence.

12.5 If the Buyer stops payment he shall be obliged to immediately send us a list of the remaining reserved ownership goods and a list of his accounts receivable from the sale of the reserved ownership goods together with copies of the invoices.

12.6 We are obliged, on request of the Buyer, to surrender the securities to which we are entitled (reserved ownership goods and accounts receivable from their sale), selected at our discretion, to the extent that their value, calculated with the manufacturing cost or purchase prices derived from the Buyer's purchase invoices or his manufacturing cost in the case of reserved ownership goods or the nominal value in the case of accounts receivable, exceeds the accounts receivable to be secured by more than 20%.

13. Applicable Law – Place of Performance – Place of Jurisdiction

13.1 In the case of export/foreign business, the entire contractual relationship is governed by the substantive law of the Federal Republic of Germany unless and to the extent another legal system mandatorily applies. The application of the Uniform Law on the International Sale of Goods (CISG) is excluded.

13.2 The place of performance for all deliverables arising from the contractual relationship is the place of business of our company.

13.3 The exclusive place of jurisdiction for all disputes on and arising from the contractual relationship, and for legal action concerning cheques and bills, is the place of business of our company. However, we are also entitled to sue the Buyer at his place of business. If the Buyer is not a businessman (pursuant to German law), a legal public entity or a public law special fund but has a general place of jurisdiction in Germany, these provisions shall only apply if he transfers his usual place of residence/business outside of the Federal Republic of Germany after contract conclusion or if his place of business or usual place of residence is not known on filing of a legal action.

14. Severability Clause

If provisions of these General Terms and Conditions of Business are or become ineffective, regardless of reason, the validity of the remaining provisions shall not be affected by such ineffectiveness.

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