

# **N+F Handelsgesellschaft mbH**

## **General Terms and Conditions of Business (GTC)**

Last updated: 01/10/2020

### **General Terms and Conditions of Sale**

#### **1. Scope**

1.1 The General Terms and Conditions of Sale set out below apply exclusively; conflicting or alternative terms specified by the Purchaser shall not be recognised unless we expressly confirm them in writing. Our Terms and Conditions shall apply even if we effect delivery to the Purchaser in full knowledge of the conflicting or alternative terms specified by the Purchaser. These General Terms and Conditions of Sale shall be deemed to have been accepted no later than the time at which the goods are received.

1.2 Our General Terms and Conditions of Sale shall only apply vis-à-vis entrepreneurs within the meaning of section 14 BGB (German Civil Code), legal entities under public law and special funds under public law.

#### **2. Prices / payment terms**

2.1 Our prices (net) are quoted exclusive of VAT; VAT must be added at the applicable statutory rate.

2.2 We reserve the right to adjust our prices in the event of costs decreasing or increasing significantly after the contract has been formed, in particular purchase costs, material costs etc. This shall apply, inter alia, to the introduction of or increases in government levies (e.g. custom duties or taxes), increases in transport and/or insurance costs, flood or low water surcharges etc. We shall furnish the Purchaser with evidence thereof upon request.

2.3 If payment is not made as per the terms of the contract, we shall have the right to charge interest on arrears at a rate of 9 percent above the basic rate of interest defined in section 247 BGB.

2.4 We reserve the right to exercise further claims for damages caused by any such default on payment. The right to claim commercial default interest from traders (section 353 HGB (German Commercial Code)) shall remain unaffected.

2.5.4 The Purchaser shall only have rights of set-off and retention if and insofar as its counterclaims are reciprocal to our claims (section 320 BGB) or if its counterclaims have been confirmed by a final and absolute court judgement, are uncontested, or are recognised by us. Furthermore, the Purchaser may only exercise a right of retention if and insofar as its counterclaim originates from the same contractual relationship.

2.6 In the event of doubt regarding the Purchaser's solvency, in particular if the Purchaser is in default of payment, we have the right - subject to further rights - to revoke any terms of credit granted and to request prepayment or collateral. The details shall be regulated as per section 321 BGB.

2.7 Proof of export: Should a Purchaser domiciled outside the Federal Republic of Germany (extraterritorial purchaser) collect merchandise or have it collected by an agent for transport or delivery outside the Federal Republic of Germany, the Purchaser shall furnish us with a proof of export as set out in the legislation on taxes. If this proof is not furnished within 30 days of the merchandise being handed over, the Purchaser shall pay VAT on the invoice amount at the rate applicable for shipments to destinations within the Federal Republic of Germany.

#### **3. Delivery, availability of supplies, force majeure**

3.1 Unless otherwise specified in these General Terms of Sale or in our contract, the version of the INCOTERMS valid at the time the contract is formed shall apply.

3.2 The formation of the contract shall be subject to the proviso that our suppliers deliver the requisite materials in good time. This shall only apply in cases in which we are not culpable for non-delivery. The Purchaser shall be notified without delay if the goods or services requested become unavailable. In such cases, any payment made shall be refunded immediately.

3.3 We shall not be held liable for impossibility of performance or for delays in delivery insofar as these were caused by force majeure or by other events which were not foreseeable at the time the contract was formed (e.g. operational disruptions of any kind, difficulties procuring materials or energy supplies, transport delays, strikes, lawful lockouts, shortages of manpower, energy or raw materials, difficulties procuring necessary official permits, epidemics and pandemics, official measures and orders, defaults on delivery or incorrect and/or unpunctual deliveries by suppliers) and for which we are not culpable. If such events make it significantly more difficult or even impossible for us to provide the goods or services ordered, and if the impediment is not merely of temporary duration, we shall be entitled to withdraw from the contract. In the case of impediments that are temporary in duration, the delivery or performance deadlines shall be extended or the delivery or performance dates postponed by the duration of the delay plus an appropriate lead time. If the delay means that the Purchaser can no longer be reasonably expected to accept delivery of the goods, the Purchaser may withdraw from the contract by sending us a written declaration without undue delay.

#### **4. Liability for material defects**

4.1 The Purchaser shall undertake to inspect the goods without undue delay as set out in section 377 HGB and to notify us of any defects.

4.2 The provisions set out above shall also apply if the goods have been overshipped or shortshipped, or if the incorrect goods have been delivered.

4.3 The Purchaser shall not be entitled to assert any claims due to defects if it was agreed that goods of inferior quality shall be supplied.

4.4 If a defect is found and we are notified thereof in due time, we shall have the right to effect subsequent performance within a reasonable time either by remedying the defect or by delivering an item that is free of defects. The costs of the subsequent performance shall be borne by us. If the subsequent performance is unsuccessful, or if the Purchaser cannot be reasonably expected to accept it, the Purchaser shall have the right to request either a price reduction (discount) or the cancellation of the contract (withdrawal). However, the Purchaser shall have no right of cancellation if the breach of contract is only minor, in particular if the defects are only minor. Furthermore, the Purchaser may claim compensation in lieu of performance insofar as our disclaimer pursuant to subsections 4.6 to 4.10 does not apply.

4.5 The warranty period shall be one year from delivery or, insofar as acceptance is required, one year from acceptance. The limitation periods that apply in cases of recourse against the supplier pursuant to sections 445b, 478 BGB shall not be affected by this provision. The aforementioned one-year period shall not apply to claims for damages of any kind asserted by the Purchaser, including claims based on our being in default with a demand for subsequent performance. Claims for damages shall expire mutatis mutandis as set out in the statutory provisions. If the goods offered for sale are used, the contract shall exclude any warranty for material defects.

## **5. Liability**

5.1 Regardless of the legal grounds, our liability for damages, in particular for impossibility, delay, defective or incorrect deliveries, breaches of contract, breaches of obligations during contractual negotiations, and/or tortious acts shall, insofar as we are at fault, be limited as set out in this section (section 5).

5.2 We shall not be held liable in cases of simple negligence on the part of our organs, legal representatives, employees or other vicarious agents insofar as no cardinal contractual obligations have been breached. A cardinal contractual obligation within the meaning of these General Terms and Conditions is defined as any obligation, the fulfilment of which is essential to the proper execution of the contract and on the observance of which the Purchaser may ordinarily rely.

5.3 Insofar as we are liable for damages pursuant to the provisions in this section (section 5), our liability shall be limited to damages that we foresaw as possible consequences of a breach of contract at the time the contract was formed or that we should have foreseen if we had taken due care. Furthermore, indirect damages and consequential damages arising from defects in the goods delivered are only compensable if they typically occur when the goods are properly used for their intended purpose.

5.4 The aforementioned exclusions and limitations of liability shall apply equally in favour of the Vendor's organs, legal representatives, employees and other vicarious agents.

5.5 Claims for the reimbursement of expenses asserted by the Purchaser pursuant to section 284 BGB shall be

waived insofar the provisions set out above exclude compensation for damages in lieu of performance.

5.6 Insofar as we provide technical information or act in an advisory capacity, and insofar as this information or advice does not constitute part of the contractually agreed service to be rendered by us, the aforesaid information or advice shall be provided free of charge and under exclusion of all liability. The properties of any samples supplied to the Purchaser shall be non-binding unless guaranteed in writing.

5.7 The limitations in this section (section 5) shall not apply to our liability for wilful misconduct, guaranteed properties, or injury to life, limb or health, or to our liability pursuant to the Product Liability Act.

## **6. Reservation of ownership**

6.1 We shall reserve ownership of the goods delivered by us until all payment claims arising from the business relationship with the Purchaser have been settled.

6.2 The Purchaser has the right to resell the goods during the ordinary course of business; however, the Purchaser hereby assigns to us all receivables that accrue to them from the resale.

6.3 Any processing or remodelling of our goods carried out by the Purchaser is invariably carried out for us. If our goods are processed with other objects that do not belong to us, we shall acquire co-ownership of the new object proportionate to the value of our goods compared to that of the other processed objects at the time of the processing.

6.4. If our goods are inseparably combined with other objects that do not belong to us, we shall acquire co-ownership of the new object proportionate to the value of our goods compared to that of the other objects in the combination at the time the combination took place.

6.5 The Purchaser shall undertake to ensure that the reserved goods are fully insured against the customary risks at all times and to furnish us with evidence thereof on request. The Purchaser hereby assigns to us any insurance claims that may accrue to them.

6.6 Should the value of the securities provided by the Purchaser exceed the receivables due to us by more than 20 %, we shall release or return securities of an appropriate value; these securities shall be chosen by us.

## **7. Place of performance / jurisdiction / applicable law**

7.1 The place of performance for all obligations arising from the Contract, including the Purchaser's payment obligations, is Hamburg.

7.2. If the Purchaser is domiciled in the European Economic Area, the sole place of jurisdiction for all disputes arising from or in connection with this contract, including any tortious claims, shall be Hamburg. If, on the other hand, the Purchaser is domiciled outside the European Economic Area, all disputes arising from or in connection with the contract or the validity thereof shall be finally settled under the rules of arbitration of the German Arbi-

tration Institute (DIS) without resorting to regular legal proceedings. Insofar as the amount in dispute does not exceed EUR 100,000, the arbitral tribunal shall consist of a sole arbitrator; for claims in excess of this amount, the arbitral tribunal shall consist of three persons. Subsequent increases in claims or counterclaims, the withdrawal of part-claims and/or similar circumstances shall not effect any change in the number of arbitrators. The arbitration proceedings shall take place in Hamburg. The language of the proceedings shall be German. When taking evidence, the arbitral tribunal shall be guided by the procedures customary at German state courts. Principles of procedure under common law, such as those relating in particular to the production of documents, shall not apply directly or mutatis mutandis. If and insofar as one Party is obliged to reimburse any lawyers' costs incurred by the other Party in connection with the arbitration proceedings, these shall be limited to the costs that may be billed pursuant to the Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz – RVG).

7.3. All contracts shall be governed by German law, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods.

See the next page for our General Terms and Conditions of Purchase.

# **N+F Handelsgesellschaft mbH**

## **General Terms and Conditions of Business (GTC)**

### General Terms and Conditions of Purchase

1. The Terms and Conditions set out in our Contract shall apply exclusively. Conflicting or alternative terms shall not be recognised unless we expressly confirm them in writing. Neither shall our acceptance of the goods constitute any recognition of the Vendor's alternative terms.

2 The place of performance for all obligations arising from the Contract, including the Purchaser's payment obligations, is Hamburg.

3. In the event of delays in delivery, we shall have the right, following the issue of a written warning vis-à-vis the Vendor, to charge a contractual penalty of 0.5 % of the value of the respective order for each commenced week of delay, such contractual penalty not to exceed a total of 5 % of the order value. The contractual penalty shall be added to the compensation payable by the Vendor for the delay.

4. In derogation of section 438 par. 1 no. 3 BGB (German Civil Code), the general limitation period for warranty claims shall constitute 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for in rem restitution claims vis-à-vis third parties (section 438 par. 1 no. 1 BGB) shall remain unaffected. Claims arising from defects of title shall under no circumstances become statute-barred as long as the third party – due in particular to the non-existence of a limitation period – can still assert its claims against us.

The limitation periods set out in sales law, including the extension set out above, shall apply to all warranty claims insofar as this is permitted by law. If and insofar as we are entitled to non-contractual compensation for defects, the regular statutory limitation periods (sections 195, 199 BGB) shall apply except in individual cases where the application of the limitation periods set out in sales law would mean that the limitation period would be longer.

5. If the Vendor is domiciled in the European Economic Area, the sole place of jurisdiction for all disputes arising from or in connection with this contract, including any tortious claims, shall be Hamburg. If, on the other hand, the Vendor is domiciled outside the European Economic Area, all disputes arising from or in connection with the contract or the validity thereof shall be finally settled under the rules of arbitration of the German Arbitration Institute (DIS) without resorting to regular legal proceedings. Insofar as the amount in dispute does not exceed EUR 100,000, the arbitral tribunal shall consist of a sole arbitrator; for claims in excess of this amount, the arbitral tribunal shall consist of three persons. Subsequent increases in claims or counterclaims, the withdrawal of part-claims and/or similar circumstances shall not effect any change in the number of arbitrators. The arbitration proceedings shall take place in Hamburg. The language of the proceedings shall be German. When taking evi-

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