

1. Range of application

For the contract in hand and for all further contracts with the customer are exclusively valid, besides the offer and the special terms listed in the order confirmation, our General Terms and Conditions specified below. Any additional or different agreements, as especially contradictory terms of trade of our customer need to be valid our express written and duly marked acknowledgement. Our silence does not give consent to contradictory General Terms and Conditions of our customer.

2. Offers and Quotation

- a) Our offers are not binding and without engagement. Only the written order confirmation makes the offer binding. Any agreements, even supplemental ones, made by telephone, telegram or representative, need our written confirmation to be valid. Failing our written order confirmation, the delivery note is regarded as order confirmation.

Unless otherwise agreed, we decide on the packing for deliveries ex works. Boxes, packages, cardboard boxes, postage etc. will be invoiced. Packing will be invoiced at cost price and is non-returnable. Value-added tax will be charged separately.

- b) For first orders, a minimum order value of Euro 1,500.-- is required.
- c) Prices are always subject to price ruling at time of dispatch. The extent of supply and service we are responsible for is subject to the wording of the contract combined with the General Terms and Conditions. We at any rate reserve the right to modify designs for the purpose of technical progress if this is reasonable to the customer.
- d) We reserve the right to terminate the customer relationship at any time and without giving any reasons.
- e) Specialised dealers will only be served with adequate quantities.

3. Purchase for exportation

If our customer buys articles for exportation, he undertakes a guarantee for the dispatch to the territories outside the tariff jurisdiction and their use there. Upon our request he has to furnish adequate proof.

4. Dispatch and transfer of risk

Goods will be dispatched on account and at the customer's risk even if "carriage paid". The customer bears the risk of fracture during transport. If the customer comes to pick up his goods or if these are sent to the customer upon request, the risk of accidental destruction or accidental deterioration is transferred to the customer at the moment of delivery to the customer or forwarding agent, however when the goods leave works or stock, at the latest, and even then if the customer charges us as carrier. This is true even if the goods are dispatched from another place but the delivery place. If the goods are specified and ready for dispatch and the dispatch is then delayed for reasons we are not responsible for, the risk transfer to the customer goes synchronous with the mailing of the notification that the goods are ready for dispatch. This instruction applies also to partial deliveries. A transport insurance is effected only upon the customer's express instruction and at his own expense.

5. Delivery time, delayed delivery and default of acceptance

Delivery dates are not binding unless they have expressly been confirmed in writing as being binding. Specifications and calls have to be made by the customer in time to allow enough time for fabrication and dispatch till the final acceptance date. If a delivery time in time units (weeks, months) is agreed upon, the agreed delivery time begins with the day of mailing of the order confirmation and is regarded as being kept if the goods have left the works or store by the end of delivery time or the readiness for dispatch of the goods is announced at dispatch. Modifications of the contract that might affect the delivery time lead to its due extension. If the customer defaults in an obligation subject to the contract we are entitled to extend the term of delivery by the period of delay.

In case of wrong or delayed delivery by the pre-supplier we are not responsible for, both parties have the right to recede from the contract as far as it concerns undeliverable objects. We shall inform the customer without delay about the undeliverability of an article and, in case of our rescission, shall not hesitate to reimburse any already granted equivalents by the customer with regard to the undeliverable articles. The delivery period is duly extended if a delivery in due time is prevented by circumstances beyond our control, strike, lockout, interruptions we are not responsible for or any other circumstances we are not responsible for. If the circumstances mentioned in the previous phrase lead to an extension of the delivery period by more than six weeks, basing on the delivery time agreed upon by contract or indicated without any commitment, both contracting parties have the right to terminate the contract. In this case any compensation claims by the customer are excluded. Furthermore, the customer has a legal right of rescission in case of non-compliance with the binding or, according to paragraph 2, extended delivery period. Compensation claims due to nonfulfillment cannot be asserted except that our delay is due to intent or gross negligence.

If the dispatch of goods ready for delivery is not possible without our fault, is not wanted by the customer or if the customer is in default of acceptance, we shall be able to store the goods at the customer's expense. In this case, the risk of accidental destruction is transferred to the customer. Thereby, the payment conditions agreed upon are not concerned.

6. Size of order

In default of special agreements regarding the admissibility of deviations, the size of order is only an approximate value. We try to observe it if possible. Plus or minus deviations of max. 20 percent with a size of order of 100 or less pieces of the same type or of max. 10 percent with higher quantities are allowed. The really delivered quantity must always be paid. Deviations in measures, content, weights and nuances of colour conditioned by manufacturing are allowed within the commercial scope. Any details regarding measures and weights of packages are made to the best of our knowledge and with exemption from liability.

7. Delivered samples and patterns

The supply plant does not replace any delivered samples and patterns in case of loss or fracture inasmuch as loss or fracture occur without its fault or negligence.

8. Rights on drafts, manufacturing tools and plans

We reserve all rights on drafts and plans we have worked out, especially copyrights and inventor's rights, trade-mark right registrations can be effected only by ourselves.

Any tools, moulds and plans are our property even if the customer has paid the costs of purchase in whole or in part.

Manufacturing costs or tools the customer places to our disposal to accomplish his order, without any essential modifications by ourselves, remain the customer's property, any trade-mark rights on such moulds are reserved for the customer. All sales documents as catalogues, specimen books, price lists etc. we place to our customer's disposal remain our property and have to be returned upon request.

9. Trade-mark rights of third parties

Our customer has to guarantee that the order fulfilment according to his rules concerning shapes, measures, declarations of colour and weight does neither interfere with trade-mark rights of third parties nor trigger out claims regarding the right to compete. The customer has to exempt us from any claims that might be asserted on us in connection with encroachment upon the rights of third parties, including all court costs and extra-judicial costs of prosecution, our own expenses included.

10. Complaints and guarantee

- a) The customer has to check the goods upon receipt for completeness and apparent defects and make a complaint in writing and with detailed specifications of the defect, and this within 10 working days upon receipt of the delivery at the latest. Defects not perceptible on the outside have to be censured in writing immediately after being found, however within 6 months from delivery at the latest. Otherwise, the delivery is regarded as being effected in due order. §§ 478 and 479 of the Civil Code and further investigation- and claim obligations according to § 377, 378 of the Commercial Law will not be affected. Failing to make a complaint in time, the customer has not any warranty claims. The complaint does not interrupt the period of warranty. Objected goods have to be sent to us for inspection.
- b) We guarantee for goods which are defective at the moment of passage of risk, i.e. we replace or gratuitously repair them. Should repair be impossible or fail, the customer has the right to decrease the remuneration or to rescind the contract. For goods or parts of goods we are not the manufacturer of, we guarantee only if the judicial enforcement of warranty claims against our supplier, which we herewith assign to our customer, has not been successful.
- c) We do not guarantee for defects resulting from non-respecting our instructions, generally recognised technical rules or manufacturer's instructions on installation or use as well as from unqualified or faulty use or from natural wear. Warranty claims are furthermore excluded if the purchaser or third party make modifications or repair works without our previous approval or if the defect is due to the use of component supplies of the customer.
- d) Claims for replacement of consequential damages due to violation of contractual commitments, compensation claims accrued from the delivery of a defective article or claims because of incorrect advice or violation of further contractual subordinate obligations are excluded unless we, our representatives or our vicarious agents are charged with intent or gross negligence. Compensation claims because of injury of life, body and health are not subject to this regulation.

11. Liability for other claims

Unless in case of implied warranty, i.e. especially for claims of actionable tort, liability subject to the law for product liability or because of further breaches of duty, we are liable neither for defects on our own delivered goods nor for defects arising on the customer's property or fortune, only if we, our representatives or vicarious agents are charged with intent or gross negligence. We are not liable for personal injuries and for claims based on the law for product liability, only if we, our representatives or our vicarious agents are charged with intent or gross negligence. For any case of contractual claims, the period of limitation for compensation claims is six months from transfer of risk.

12. Retention of title

- a) We have full property in the delivered goods until complete payment of all even future claims, including all accessory claims as bill charges, financing costs, interests resulting from business relations with the customer. The retention of title is valid also for balances of current invoices; in this case, the retention refers to the final balance. With complete balancing of the account, the retention of title expires.
- b) The customer is allowed to sell the goods we have delivered only in due course of business. He is not allowed to place in escrow these goods or to put them in pawn. He is obliged to advise without delay and at his own expense any defects as well as any seizure of third parties of the goods subject to retention of title as well as to transmit all documents (e.g. writ of attachment). Should the customer resell the goods, he is obliged to secure our rights.

The customer is allowed to form or process our delivered goods in due course of business. Processing is made in a way that we, the manufacturer, become co-proprietor on the new object created by processing, and namely in the proportion of the purchase price quoted to the customer to the selling price of the new article quoted by our customer to his purchasers. Should the customer get the exclusive ownership of a new article, via combination, mixture or commixture of the conditional goods with other goods, the contracting partners are agreed that the customer has to concede common ownership on the new article, in the proportion of the purchase price quoted to him to the further selling price quoted by our customer. For any cases are valid the conditions listed below b).

- c) Until full redemption of all our claims arising from our business relations, the customer assigns to us by now any claims he is entitled to by the sale of goods we have delivered or goods we are proprietor or co-proprietor of according to paragraph c); if we are only co-proprietor, the assignment is confined to a share of the claim, the amount of which corresponds to the purchase price we have charged to the customer as well as possible accessory claims. If the claim resulting from resale of the conditional goods is replaced by another claim, e.g. insurance benefits or a compensation claim, the assignment concerns this claim; the clause concerning partial assignment on the goods we are proprietor or co-proprietor of according to c) is duly valid. Only under reservation of his claims for payment of the resale debts, the customer is entitled to accept bills of exchange, in case of discounting he assigns to us the claim for disbursement of the discount earned; the clause concerning partial assignment in case of sale of goods according to c) is valid here, too. If the claim to assign is on current account, the customer assigns to us the claim of the final balance to the amount of the purchase price we have invoiced. We accept the assignment in all cases. The customer has collection authority on the assigned claim. If the customer has stipulated a prohibition of assignment with his buyer, he is not authorised to sell the goods.

This does not affect our authorisation to collect the claim ourselves. We, however, bind ourselves not to collect the claim unless the conditions of clause G) have occurred.

- d) If the value of the assigned claims as well as of further securities exceeds by more than 10 % our claims to secure, the securities will be released in order of § 366 of the Civil Code without our consent be necessary.
- e) The customer is obliged to give us any information necessary for using the right and, upon request, give an insight into his documents. Upon our request the customer has to indicate any assigned claims and the corresponding debtors, indicate any details necessary for the collection of claims, hand over the corresponding documents and notify the debtor of the assignment.
- f) The suspension of payments, bankruptcy petition, declaration of insolvency or decree of a judicial or extra-judicial insolvency proceeding as well as the filing of a statutory declaration according to § 807 ZPO terminate the customer's right to resell the conditional goods as well as the goods subject to our co-property according to above mentioned processing clause and to collect the claims assigned to ourselves.
- g) If the customer delays payment or in cases mentioned in paragraph f) we are entitled, even without rescission, to take back the delivered goods as security. The customer has to pay any costs incurring. Further legal rights will not be affected. The customer has to guarantee proper storage of the goods and to effect a theft insurance, flood -, fire -, transport insurance and an insurance for further damages at his own expenses.
- h) If the title retention needs to be registered for judicial reasons, the customer is obliged to give his consent in due form. If a title retention or another security agreed upon according to these conditions, cannot be agreed upon with the same effect as by German Law, but if the reservation of other rights to the delivery item or further security measures are allowed, we are entitled to these rights. The customer already gives his agreement hereto and has to effect all necessary assistance works.
- i) Should we process goods for the customer, we are entitled to sell these goods by private contract following to preceding threat, in case of delay of payment, suspension of payments or declaration of insolvency. The threat allows a 14 days' period from date of mailing. The customer receives the portion of the sales profit exceeding our wages claim, less a lump sum amounting to 10% of our wages.

13. Conditions of payment and delivery

- a) Our invoices are payable in Euro.

Unless there are valid special conditions of payment and delivery for certain delivery areas or buyers, our invoices are payable:

- (1) within 10 days from date of invoice, less 2% cash discount
- (2) within 30 days from date of invoice, (net without discount)
- (3) For payment by bank collection, within 10 days from date of invoice, less 3% cash discount.

Discount deduction however is allowed only if any due invoices are paid by the customer.

- b) For certain delivery areas (countries) resp. buyers are valid the conditions of delivery and payment indicated in the current price list for the respective delivery area or buyer.
- c) NACHTMANN reserves the right to change payment conditions or to stop fulfilment of any agreement with the customer if the customer's financial situation or payment habits might make it necessary.
- d) Bills of exchange and cheques are accepted only upon special agreement and in fulfilment without discount. Any collection costs and redemption fees are to be paid by the customer. For payments to be made in other free convertible currencies, not in Euro, the customer bears the exchange risk. Any bank charges will have to be paid by the customer.
- e) Default becomes effective within 30 days from date of invoice. From the time of default, i.e. from the 31st day from date of invoice, default interests will have to be applied acc. to § 288 of the Civil Code.
- f) In case of non-compliance of the grace period by more than 60 days, any delivery to the customer is stopped until entry of a credit of the unpaid amount on our account. We do accept new orders, however without further processing or delivery.
- g) If interests and costs have already accrued, we are authorised to appropriate the payment first to the costs, then to the interests and at last to the main performance. The customer has to be informed about the clearing operation. Should the customer determine a different crediting, we have the right to refuse receipt of the performance.

14. Partial delivery

Each partial delivery of orders secured is regarded as special business with regard to calculation and payment.

15. Default of payment and creditability

Default of payment and other contract violations entitle us, after a due period has passed, -however immediately if it can not be expected to set an additional respite -, to recede from the contract and/or to claim compensation for breach of contractual obligations.

Default of payment entitles us furthermore to hold over the rest of the goods or to ask payment in advance. Should we get any information that might be a matter of concern regarding the customer's creditability, we have the right to ask payment in advance or to send goods only cash on delivery. If payment in part is agreed upon and the customer defaults on his payments to an amount of more than 10 percent of the unpaid purchase price, we have the right to fix a due date for the full outstanding amount.

16. Compensation

Compensation by the customer is allowable only with uncontested claims or claims valid in law.

17. Commercial trade-mark rights

Our customer is entitled to use trade-marks or logos we have fixed on the goods or the packing to identify the unmodified and originally packed goods. This, however, does not entitle the customer to use the trade-marks, logos or protected material anyway.

The customer engages himself to omit any further use. Any use of our trade-marks, our name, our company's labelling and company's symbols for publications or prints is without reserve allowed only upon our written approval.

Documents as our catalogues, brochures, illustrations etc. are our literary property. Insofar are valid the relevant legal provisions of the copyright, trade-mark right and Designs Act.

The customer engages himself not to make available these documents, in whole or in part, to a third party or to use them otherwise as specified without our written approval. Should we refuse an order, all documents have to be returned to us.

18. Place of performance, jurisdiction and applicable law

The contract is subject to German Law, excluding the UN Purchase Law. Place of performance for all obligations resulting from the contract, even those of the customer, is the delivery plant. Weiden in the Upper Palatinate is the exclusive jurisdiction, however do we have the right to sue in court also at the domicile of corporation or the debtor's residence.

19. Assignment of claims

For financial purposes we are entitled to assign our claims to a factor company.

20. Data protection and data storage

Within the scope of the business relations with our customers, we store and process personal data received with observance of the legal prescriptions. Closing the contract, our customers consent to use the personal data only for marketing purposes. This consent can be revoked at any time.

21. Marketing engagement and penal clause

- a) Customers which are entrepreneurs engage themselves to use the delivered goods exclusively for selling in retail trade.
- b) The customers engage themselves furthermore not to sell the delivered goods outside their trading area, directly or indirectly, or to solicit customers there.
- c) Should the customer act in violation of this agreement, we reserve the right to recede from current contracts and to refuse future delivery to the customer. Should the customer contravene the regulations, he is obliged to pay a penal sum amounting to our selling price.

Upon our request, the customer has to give in writing and without culpable hesitation any information necessary to ascertain the real damage. We expressly do reserve the right to enforce damages exceeding the penal clause.

22. Conclusion

Should individual provisions of the General Terms and Conditions be ineffective in whole or in part, this does neither affect the effectiveness of the General Terms and Conditions nor the contract.