

General Terms and Conditions for Delivery and Business of Niehues Anlagenbau GmbH & Co. KG

§ 1 Scope – General

- (1) Our General Terms and Conditions for Delivery and Business (GTC) apply to the provision of deliveries and services, including information and consulting, to entrepreneurs within the meaning of Section 14 German Civil Code (hereinafter BGB), i.e., natural persons or legal entities, who acquire the goods or service for commercial or professional use, as well as legal entities under public law or special funds under public law.
- (2) Our GTC apply exclusively; we do not recognise conflicting or deviating GTC of the Client unless we have expressly agreed to the validity thereof. Our GTC apply even if we provide the deliveries and services unconditionally in the knowledge of terms and conditions of the Client that conflict with or deviate from our own.
- (3) Insofar as textual form is mentioned in the following, both the written form and the form described in Section 126b BGB are permissible, in particular fax or email.
- (4) As far as claims for damages are mentioned in the following, this also means claims for compensation of expenses within the meaning of Section 284 BGB.

§ 2 Conclusion of the contract – explanations – rights – assignment prohibition

- (1) The Client's order represents a binding offer. Offers or quotations previously submitted by us are non-binding; they are requests for orders. We can accept orders or requests within fourteen calendar days upon receipt, provided the Client does not regularly expect us to accept them later (Section 147 BGB). This also applies to the Client's reorders.
- (2) The acceptance of an order or request by us is subject to the condition that outstanding payments by the Client are settled and that a credit check of the Client does not return negative information. In the case of delivery or service within the Client's period of commitment (see paragraph 1 sentence 2), our acceptance of the order may be supplanted by our delivery, whereby the dispatch of the delivery is decisive.
- (3) Verbal commitments made by our representatives or other agents must be confirmed by us in writing.
- (4) Legally relevant explanations and notices that the Client must provide to us or to a third party, must be in text form.
- (5) We reserve all property rights and copyrights to illustrations, drawings, data, calculations, samples and other documents concerning our products and services. This also applies to written documents that are designated as confidential. The Client requires our express written consent before using or passing such documents on to third parties; otherwise, both are prohibited. The documents mentioned in sentences 1 and 2 must be returned to us, insofar as no order based thereon is provided to us.

- (6) We reserve the right to protect all transactions with credit insurance and to provide the insurer with the required information about the Client and contractual relationship.
- (7) The Client may not transfer contractual claims without our written consent, unless the provisions of Section 354a German Commercial Code (hereinafter HGB) apply.

§ 3 Subject matter of the contract and object of performance - quality of goods

- (1) Information and explanations with regard to our products and services that are provided by us or our sales mediators are provided based exclusively on our previous experience. Without express agreement to the contrary, we are not responsible for ensuring that the products that we supply and/or our services are suitable for the procedures, applications and other purposes of the Client, in particular with regard to the delivery of specifically requested or specified goods described in detail.
- (2) We shall work in an advisory capacity only by virtue of a separate consultation contract concluded in writing.
- (3) Information provided by us about the subject of delivery of service (e.g., weights, dimensions, serviceability, load capacity, tolerances and technical data) as well as our representations thereof (e.g. drawings and illustrations) are only approximate and shall be understood as average values insofar as the usability for the contractually intended purpose requires exact conformity.
- (4) The properties of samples or trial copies become part of the contract only if expressly agreed in writing.
- (5) No guarantees exist except for those that we expressly assume in the contract. In particular, descriptions of the subject matter of the contract or the scope of the delivery and services, feature specifications and technical data shall not be understood as a guarantee of quality. A guarantee is only considered as having been accepted by us if we have designated a feature and/or performance as "legally guaranteed" at least in writing.
- (6) The Client can make quality claims on the goods ordered only to a sum that can be reasonably or commercially offered for goods in the price range of the goods ordered.
- (7) In the case of the delivered goods, customary deviations and deviations that occur due to legal regulations or that represent technical improvements, as well as the replacement of components with equivalent parts, are permitted and do not entitle the Client to make complaints and claims against us, insofar as they do not affect usability for the contractually intended purpose and there is compliance with any agreed specifications. The above also applies to sales based on a commercial sample.
- (8) In the case of contract processing, we must be provided with the specially specified starting materials as well as the technical documents in a timely manner and free of charge. If the starting material does not meet the requirements, we will invoice the resulting costs separately.

- (9) Remnants of production, waste, shavings and other waste become our property.
- (10) It must be expressly agreed if the goods are to be delivered and packaged having been protected against rust.

§ 4 Prices

- (1) The prices apply to the agreed scope of the service and delivery. Extra or special services will be invoiced separately.
- (2) Prices are quoted in euros ex works plus packaging, VAT, and with customs duties as well as fees and other public charges in the case of export deliveries.
- (3) Should the delivery or service be delayed by more than four months after the conclusion of the contract, and should the cost of wages, materials, packing materials, shipping costs, taxes or fees have increased during the interim period, the agreed price may be adjusted in accordance with the impact of the aforementioned cost factors. Insofar as the agreed prices are based on our list prices and the delivery or service is to be concluded more than four months after the conclusion of the contract, our list prices valid at the delivery or service apply (in each case less an agreed percentage or fixed rebate). Accordingly, if the price changes by more than 10% compared to the contractually agreed price, the Client has the right to withdraw from the contract as long as we adhere to a price increase request despite notification of the Client's intention to withdraw.

§ 5 Terms of payment

- (1) Unless we specify or agree otherwise, remuneration is due in full immediately upon receipt of the goods or other service without deduction of discount.
- (2) The Client shall only be entitled to rights of set-off if the Client's counterclaims have been legally established, are undisputed or acknowledged by us.
- (3) A right of retention of the Client is excluded, unless the Client's counterclaim arises from the same contractual relationship and is undisputed or legally established.
- (4) If the Client falls into arrears with the payment of a due claim, all other claims which we hold against the Client from other legal relationships, and which have already arisen, shall also be due immediately; in this case, payment terms, deferrals or similar payment aids granted by us are also forfeit. In this case, we are also entitled to withhold services that are still outstanding.
- (5) Upon conclusion of the contract, should it become apparent that our claim to the purchase price is jeopardised by a Client's inability to pay (e.g., due to an application for the opening of insolvency proceedings), we shall be entitled to withdraw from the contract according to the statutory provisions and, if necessary, after the deadline (Section 321 BGB). In the case of contracts for the production of unwarrantable items (custom-made), we can declare our withdrawal immediately; the statutory provisions on the dispensability of the deadline remain unaffected.

§ 6 Performance and performance period

- (1) Binding dates for deliveries or services require our written confirmation for evidence purposes. Insofar as a duty of cooperation of the part of the Client is necessary, an agreed performance period does not start before the Client has fulfilled this obligation. Compliance with payment agreements also constitutes a duty to cooperate in this sense.
- (2) If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers or sub-contractors despite proper availability; do not receive such deliveries or services correctly or in good time; or if events of force majeure occur, we will inform the Client in a timely manner. In this case, we shall be entitled to postpone the delivery or, respectively, the service for the duration of the hindrance, or to withdraw in whole or in part from the agreement because of the unfulfilled part of the contract, insofar as we have fulfilled our aforementioned obligation to inform and have not assumed the procurement risk or manufacturing risk. Force majeure includes strike, lockout, intervention by the authorities, energy and raw materials shortages, non-culpable transports bottlenecks, non-culpable operational obstructions, e.g. due to fire, water and machine damage, and all other obstructions for which we are objectively not culpable.
- (3) If a delivery or service deadline or a delivery or performance deadline is agreed and binding, and if, due to events in accordance with paragraph 2 above, the agreed delivery or service deadline or the agreed delivery or performance deadline is exceeded by more than four weeks or, in the case of a non-binding service date, if the adherence to contract is objectively unreasonable for the Client, the Client shall be entitled to withdraw because of the unfulfilled part of the contract. Further rights of the Client, in particular claims for damages, do not exist in this case.

§ 7 Default by the Contractor

- (1) Insofar as the assertion of rights by the Client presupposes that a reasonable grace period be set, this period shall be at least two weeks.
- (2) If we are in default, then our liability for compensation for the delay damage in case of ordinary negligence is limited to 5% of the contract price. Further claims of the Client remain unaffected.
- (3) Contractual penalties for late delivery or service are excluded.

§ 8 Representation requirement in the case of generic obligation and withdrawal

- (1) Insofar as the goods to be delivered are only determined according to generic characteristics, we shall only be liable for compensation for damage if we cannot prove that we are not responsible for the non-performance, the delay in delivery or the poor performance. In addition, the provisions of Section 12 of the GTC apply.

- (2) Within the scope of the legal provisions, the Client may only withdraw from the contract if we are responsible for the breach of duty.

§ 9 Fulfilment - transfer of risk – acceptance

- (1) Delivery is ex works, where the place of performance is. The goods will be shipped to another destination (shipping purchase) at the request and expense of the Client. Unless otherwise agreed, we are entitled to determine the nature of the shipment (in particular transport company, shipping route, packaging).
- (2) We will insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Client and at his expense.
- (3) The risk of accidental loss and accidental deterioration of the goods passes to the Client at the latest upon transfer. In the case of a shipping purchase, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the forwarder, the carrier or the person or institution otherwise responsible for carrying out the shipment.
- (4) Insofar as an acceptance has been agreed, this is decisive for the transfer of risk. In addition, the statutory provisions of laws governing contracts for work and services apply accordingly to an agreed acceptance. Transfer or acceptance is the same if the Client is in default of acceptance.

§ 10 Default by the Client

- (1) If the Client is in default on acceptance, fails to cooperate, or if our delivery is delayed for other reasons for which the Client is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). To this end, we charge a flat-rate compensation of 0.25% of the invoice amount for the items to be stored per completed week, starting upon the delivery date or, in the absence of a delivery period, upon notification of readiness for shipment of the goods. Proof of higher damages and our legal claims (in particular compensation for additional expenditure, reasonable compensation, termination) remain unaffected; the lump sum must be credited to more extensive money claims, however. The Client is allowed to prove that we did not incur any loss or only incurred a significantly lower loss than the aforementioned flat rate.
- (2) If the acceptance of goods or their dispatch is delayed due to a reason for which the Client is responsible, we shall be entitled, at our discretion, to demand immediate payment, to withdraw from the contract, or to refuse the performance and instead, to demand compensation for damages after setting and expiry of a fourteen-day grace period. In the event of a claim for compensation as set forth above, we may claim 15% of the agreed net remuneration for the costs incurred by processing the order and for lost profit. The Client is allowed to prove that we did not incur any loss at all, or that said losses are significantly lower than the lump sum.

§ 11 Claims in the case of defects (warranty) – statute of limitations

- (1) The Client must observe the obligations in Section 377 HGB. Defects recognisable upon delivery must also be reported to the transport company and the acceptance of defects must be arranged by the latter. Notification of defects must contain a description of the defect which must be described in detail. Any claim by the Client shall be excluded in the event that a complaint is not made in a timely manner.
- (2) We accept no liability for public statements, recommendations or advertising from a manufacturer or other third party that deviate from ours; they do not represent a contractual description of the quality of the goods.
- (3) At the start of the processing, handling, connection or mixing with other things, the delivered goods are considered to have been contractually approved by the Client. The same applies in the event of reshipment from the original destination.
- (4) The Client's claims due to material defects are excluded if these defects are the consequence of incorrect use (especially in the case of non-state-of-the-art installation or assembly contrary to the installation instructions) or natural wear of the goods, excessive use or unsuitable equipment, and the consequence of physical, chemical or electrical influences that do not correspond to the intended, average standard influences.
- (5) The Client's claims due to the expenses required for the purpose of supplementary performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the goods delivered by us are subsequently moved to a location other than the Client's premises unless the transfer complies with its intended use.
- (6) The recognition of breaches of duty in the form of material defects must always be made in writing.
- (7) The statute of limitations for claims for defects in the delivery of used goods or agreed inferior qualities (not 1a qualities) is 12 months from the day of the transfer of risk (see Section 9 para. 3 and 4 of the GTC), in the event of a refusal to accept the goods by the Client at the time of the notification of provision for goods transfer. This does not apply to construction contracts, in the case of things that have been used in accordance with their usual intended use for a structure and that have caused its defectiveness, in the case of claims for injury to life, limb or health, in the case of at least grossly negligent breaches of duty by us or one of our legal representatives or vicarious agents, as well as for claims for damages under a guarantee. Statutory special provisions for real surrender claims of third parties, in case of the malicious intent of the seller, and for claims in the supplier recourse in case of final delivery to a consumer also remain unaffected.

§ 12 Liability for damages

- (1) We are liable for damages, regardless the legal reason, without restriction
 - a) in the case of intent,
 - b) in the event of culpable injury to life, body or health,
 - c) in the event of default, insofar as a fixed delivery and/or fixed date of performance was agreed,
 - d) in the case of defects that we have fraudulently concealed or the absence of which we have guaranteed,
 - e) in the case of defects in the delivery item, insofar as liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects.
- (2) In the event of culpable violation of essential contractual obligations, however, we shall also be liable in the case of ordinary negligence limited to the foreseeable damages, upon conclusion of the contract, as a possible consequence of a breach of contract, or which we should have foreseen with due diligence and in the case of proper use of the delivery item typically expected. Essential contractual obligations are those obligations that protect the Client's essential legal positions, that the contract must grant the Client according to its content and purpose, and those obligations, the fulfilment of which makes the proper execution of the contract possible in the first place, and on whose compliance the Client has regularly relied and may trust.
- (3) We are also liable for damage caused by gross negligence. If, however, other contractual obligations other than those essential obligations have been violated, and if legal interests are affected other than the legal interests of life, limb or health, our liability in the case of gross negligence is also limited to the foreseeable damages, upon conclusion of the contract, as a possible consequence of a breach of contract or we should have foreseen with due diligence and in the case of proper use of the delivery item typically expected.
- (4) Further claims are excluded.
- (5) The disclaimers and limitations specified in paragraphs 1 to 4 also apply to corresponding breaches of duty by our vicarious agents.
- (6) Insofar as liability for compensation against us is excluded or limited, this also applies with regard to the personal liability for damages of our agents, legal representatives, employees and other vicarious agents.

§ 13 Retention of title

- (1) We reserve ownership of the goods sold until full payment of all our present and future claims under the contract and ongoing business relationship (secured claims).
- (2) Goods subject to retention of title may not be pledged to third parties or transferred as collateral before full payment of the secured claims. The buyer must notify us immediately in writing if and to the extent to which third parties access those goods belonging to us. This also applies to any other kind of impairment.

Irrespective of this, the Client must inform the third party in advance of the existing rights to the goods. The Client shall bear the costs of any intervention by us unless the third party is able to reimburse them.

- (3) The Client is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following additional provisions apply:
 - a) Retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If the property rights remain with third parties in the case of processing, mixing or combination with goods of said third parties, we acquire co-ownership in proportion of the invoice value of the processed, mixed or connected goods. Moreover, the same applies to the resulting product as applies to goods delivered under reservation of title.
 - b) The Client hereby assigns to us claims against third parties arising from the resale of the goods or the product as a whole or in the amount of our possible co-ownership share in accordance with the preceding paragraph a). We accept the assignment. The obligations of the Client stipulated in paragraph 2 also apply with regard to the assigned claims.
 - c) The Client remains authorised to collect the claim along with us. We undertake not to collect the claim as long as the Client meets its payment obligations to us, does not default on payment, has not filed for insolvency proceedings, and there is no other deficiency in its financial capacity. If this is the case, however, we can demand that the Client notify us of the assigned claims and its debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors (third parties) of the assignment.
 - d) Should the realisable value of the securities exceed our claims by more than 10%, we will release securities of our choice at the request of the Client.

§ 14 Software use

- (1) Insofar as software is included in the scope of delivery, the Client is granted a non-exclusive right to use the supplied software including its documentation. It is relinquished for use on the intended delivery item. Use on more than one system is prohibited.
- (2) The Client may only reproduce, edit, translate or convert the software from the object code to the source code to the extent permitted by law (Sections 69a et seqq. German Copyright Act (UrhG)). The Client undertakes not to remove manufacturer information, in particular copyright notices, or to modify it without our prior express consent.
- (3) All other rights to the software and the documentation including the copies remain with us or with the software supplier. Sublicensing is not permitted.

§ 15 Property rights of third parties

- (1) If a third party asserts claims against the Client for industrial property rights or copyrights (hereinafter: property rights) on the basis of the products supplied by us, and if the contractual use of the products by the Client is impaired or prohibited, the Client must notify us immediately. The Client will not acknowledge the alleged infringement and will only conduct any dispute with the third party about the infringement of property rights in agreement with us. If the Client discontinues the use of the product for reasons of mitigation of damages or other important reasons, the Client is obliged to inform the third party that the cessation of use does not entail an acknowledgement of a property right infringement.
- (2) The Client has no claims for infringement of property rights, insofar as the infringement of property rights is attributable to the Client; is based on special requirements of the Client (e.g., due to production documents, which he has relinquished to us with); is caused by an application not provided for in the product documentation; or by the fact that the product has been modified by the Client or used together with products not supplied by us. In such a case, if a claim is made against us by third parties for infringement of such property rights, the Client is obliged to indemnify us against these claims, including legal costs and other expenses.

§ 16 Choice of law – jurisdiction

- (1) The law of the Federal Republic of Germany applies, to the exclusion of standards referring to another legal system, and those of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) The exclusive place of jurisdiction is the court responsible for Stadtlohn.

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