

General terms and conditions of delivery and payment
- effective as of 01.04.2014 -

1. Scope of application

Supply contracts shall only be concluded under the following conditions, even if we do not expressly evoke these in the course of current business in the future. The buyer declares his agreement with the order confirmation and the exclusive applicability of these terms and conditions at the latest on acceptance of the delivery or of the first part-delivery. Matters not covered by these terms and conditions shall be subject exclusively to the optional legal stipulations. Deviating terms and conditions of the buyer shall not apply unless we expressly recognise them in writing. Our tacit acceptance of such deviating terms and conditions shall not be interpreted as consent or acknowledgement on our part, even for future contracts.

2. Conclusion of contracts, binding nature of offers, contract alterations

2.1 All offers made by us, including those in brochures, advertisements etc. are non-binding unless we expressly describe the offer as binding. They are invitations to make a purchase. A contract only arises – even in the course of current business – when we confirm the customer's order in writing. Our order confirmation shall form the authoritative basis for the content of the supply contract. In the case of immediate delivery, the delivery note can serve as our order confirmation.

2.2 The customer shall inform us in writing and in good time before conclusion of a contract of any special requirements to be fulfilled by our goods.

2.3 We are entitled to procure the preliminary material for the whole order immediately and to manufacture the whole order quantity immediately. Any desired alterations on the part of the customer can no longer be taken into account after the order has been granted unless this has been expressly agreed.

2.4 Ancillary agreements, alterations and amendments to the supply contract shall be made in writing.

2.5 The designations and specifications established on conclusion of a contract represent the technical standard at that point in time. We expressly reserve the right to make production alterations for supplies within the framework of a supply contract insofar as such alterations are not of a fundamental nature and the purpose in accordance with the contract is not substantially restricted.

3. Assignments

3.1 The buyer may only assign rights arising from the contract with our prior written consent.

3.2 Nabaltec is entitled to assign all claims against the buyer to third parties.

4. Prices

4.1 Our prices are euro prices and do not include packaging, transport and VAT insofar as nothing else is expressly agreed.

4.2 If price-related factors change after a contract has been concluded, we can unilaterally adjust the prices accordingly for supplies due later than four months after conclusion of the contract.

5. Dispatch, transfer of risk

5.1 Insofar as nothing else is agreed in writing, the goods are supplied FCA in accordance with incoterms.

5.2 In the case of transport damage the buyer has to provide the forwarder with documentary evidence of the damage on arrival of the goods according to the liability stipulations of the forwarder. In case of hidden damage the forwarder is made liable immediately on discovery of the damage in accordance with corresponding liability stipulations and periods of notice.

5.3 The risk of accidental loss of, or of accidental damage to, the goods shall be transferred to the buyer as soon as the goods are handed over to the buyer, the forwarder, the freight driver or any other company commissioned with the dispatch, but at the latest on leaving the works or being provided to the buyer or to a recipient cited by the buyer.

5.4 If the delivery is delayed because we exercise our right of retention owing to full or partial default in payment by the buyer or for any other reason for which the buyer is responsible, or if the buyer refuses to accept delivery, the risk shall be transferred to the buyer at the latest as of the date of our willingness to supply.

5.5 In the case of returned goods, the buyer shall bear the risk until the goods have been received at the works.

6. Acceptance

6.1 If acceptance subject to special conditions is agreed or required by law, the acceptance inspection shall take place in the works at the expense of the buyer.

6.2 If the goods are due for acceptance and the buyer does not accept them in accordance with the contract, we shall grant the buyer a reasonable period of notice for acceptance of the ordered goods and inform him that the goods shall be regarded as accepted once this period has expired. If the buyer fails to accept the goods within this period, the goods shall be regarded as accepted as soon as they leave the works.

6.3 Acceptance can only be refused in the case of substantial defects.

6.4 If the acceptance or dispatch of the goods is delayed for a reason for which the buyer is responsible, we are entitled, having given a reasonable period of notice for acceptance and after expiry of this period, at our own discretion to either demand immediate payment of the purchase price or to withdraw from the contract and to demand compensation instead of the full payment. Period of notice has to be given in writing.

7. Excess or reduced delivery, tolerances, samples

- 7.1 Production or dispatch-related deviations in terms of weight and quantity of up to 10 per cent or, in the case of specialities, up to 30 per cent of the whole order volume or of each part-delivery are permitted. The weight established by the works shall be the authoritative weight.
- 7.2 The DIN tolerances shall apply for any complaints with regard to DIN-standardised goods.
- 7.3 Samples, recipes etc. on which a delivery is based, shall be regarded as the rough basis for the delivery.

8. Industrial protection rights, industrial protection rights of third parties

- 8.1 Our samples, formulations and production processes are our intellectual property and may not be imitated by customers or passed on to third parties or used in any manner other than that specified in the contract unless the appropriate licence has been granted for this purpose.
- 8.2 If goods are supplied on the basis of recipes or other specifications of the buyer and the industrial property rights of third parties are infringed by this, the buyer shall exempt us from all claims by third parties.
- 8.3 If the buyer infringes on the contract, his industrial property rights shall not prevent the disposal of the goods by us in accordance with the contract.

9. Information, advice

Information and advice with respect to our products are given exclusively on the basis of our experience up to now. The values cited here shall be regarded as average values. All information on our products, particularly the pictures, analyses, specifications and other technical data in our offers and printed matter shall be regarded as approximate average values.

10. Guarantee, liability

- 10.1 The buyer is obliged to examine whether the ordered or proposed goods are suitable for the purpose intended by the buyer. We do not assume any guarantee for suitability.
- 10.2 Complaints with regard to the weight or the quantity (with the exception of those deviations as cited in Section 7 of these terms and conditions and which thus do not count as deficiencies) and any other obvious defects shall be reported in writing immediately, but at the latest within two weeks of receipt of the goods. Hidden defects shall be reported immediately on being discovered, stating the defects involved.
- 10.3 If the buyer fails to lodge the complaint in good time and fails to instantly provide samples of the defective goods at our request or does not keep the goods in the condition pertaining at the time of the discovery of the defect for us to inspect, all claims shall lapse.

- 10.4 We shall be notified immediately and in writing of any other infringements of our obligations before recourse is taken to legal action and given a reasonable period of time to rectify the situation.
- 10.5 In the case of justified complaints, the buyer is entitled, at our discretion, to a replacement free of charge, repair of the goods or a credit note having returned the defective goods. We are entitled to make two attempts to rectify the situation.
- 10.6 A replacement delivery can only be made when the defective goods are returned.
- 10.7 If we refuse to make a replacement delivery or repair the goods or fail to do so within a reasonable period of time, or if the rectification attempt fails or is unreasonable for the buyer, the buyer can demand a reduction of the purchase price or the annulment of the contract.
- 10.8 Further claims of the buyer arising from the law or the contract due to, or in connection with, defects or consequential damages, for whatever reason, shall be subject to the provisions of Section 11 insofar as they do not relate to compensation claims from a guarantee aimed at protecting the buyer against the risk of any consequential damages. However, even in this case we are liable only for typical, foreseeable damages.
- 10.9 The expedient treatment of a complaint shall not constitute failure to comply with these provisions.
- 10.10 We can refuse to rectify defects as long as the buyer does not comply with his obligations to a reasonable extent taking into account the nature of the defect.
- 10.11 All guarantee claims, including those for hidden defects, shall lapse at the latest 12 months after delivery.
- 10.12 This limitation period also applies to competing claims arising from impermissible actions.
- 10.13 Any claims arising from consequential damages shall lapse at the latest 12 months after delivery.
- 10.14 Guarantee claims shall, however, only lapse 2 years after delivery if the buyer supplies the goods directly or indirectly to a consumer and the consumer has reduced the purchase price or the company had to take back the goods as a result of defects. §§ 478, 479 of the German Civil Code (BGB) remain unprejudiced by these terms and conditions. Section 10.5, clause 1 of these terms and condition and §§ 478, 479 of the German Civil Code do not apply however, if the buyer or a third party have made alterations or modifications to the goods, for example by the fitting of additional parts and the defects claimed by the consumer apply to these alterations or modifications.
- 10.15 We shall not assume any guarantee or liability if defects and the resulting damages are not verifiably due to faulty material or poor advice on applications. In particular we shall not assume any guarantee or liability for the consequences of incorrect usage, for wear of the goods in ordinary or extraordinary operation and for damages caused to the goods owing to unsuitable storage.

11. Exclusion and limitation of liability

- 11.1 We shall assume unrestricted liability for intentional or grossly negligent infringements of our obligations including those of our representative or vicarious agents and for the infringement of substantial contractual obligations and in the case of impossibility of a performance due to fault on our part and of any substantial infringement of obligations.
- 11.2 We also assume unrestricted liability in the case of loss of life, personal injury or damage - also for our legal representatives or vicarious agents – arising from slight negligence. The same applies to the extent that we have assumed a guarantee for the quality of our goods or the success of the application and in the case of liability pursuant to the German Product Liability Act.
- 11.3 Notwithstanding the above sections 11.1 and 11.2 and all express assumptions of liability in these terms and conditions, we shall not assume liability for culpable infringements of obligations, notwithstanding the legal reasons, in the case of slight negligence.
- 11.4 We are liable only for typical, foreseeable damages.
- 11.5 A liability arising from the assumption of a procurement risk only applies to us if we have expressly assumed the procurement risk on the basis of a written agreement.
- 11.6 All further liability is excluded.

12. Delivery periods, call-in, self-delivery proviso, delivery delays

- 12.1 The delivery periods are the criterion for the time of delivery ex works.
- 12.2 The delivery periods shall be extended appropriately if the buyer fails to fulfil his obligations as our creditor.
- 12.3 Binding delivery deadlines and periods must be expressly agreed in writing as "fixed deadlines". In the case of non-binding or approximate (circa, around etc.) delivery deadlines and periods we will do our best to comply with these.
- 12.4 Delivery periods begin with the receipt of our order confirmation by the buyer, but not before all details for the execution of the order have been clarified and all of the other conditions to be fulfilled by the buyer have been fulfilled; the same applies to delivery deadlines. If the buyer requests alterations after the granting of the order, a new delivery period shall begin with the confirmation of the alteration by us.
- 12.5 Deliveries before the expiry of the delivery period are permissible. The delivery day is the day of notification of willingness to deliver or the day of the dispatch of the goods. We are entitled to make part-deliveries. In the absence of any other written agreement, the buyer's interest in our goods shall only lapse if we fail to deliver substantial parts or the delivery of substantial parts is delayed.
- 12.6 The call-in and specification of individual part-deliveries shall, as far as possible, be made for regular intervals and quantities and in good time to allow the correct manufacture and supply within the

contractual deadline. If no period of time has been established for the intervals, 3 months shall be regarded as agreed.

- 12.7 If the buyer fails to call in or specify goods in time or is late in doing so, it is no longer in our interests to maintain the contract. In this case, notwithstanding our additional legal rights, we are entitled to specify a reasonable extension of the period and to withdraw from the contract or demand compensation after this has expired.
- 12.8 If we are prevented from fulfilling our obligations by unforeseen circumstances which, despite reasonable care, were unavoidable, or if for any other reason we are not responsible for the failure to fulfil our obligations, the delivery period shall be extended by the duration of the hindrance. This applies particularly if, for reasons beyond our control, we do not receive supplies or services from our subcontractor or such supplies and services are incorrect or late, and in the case of labour disputes, interruptions of our own operations, interruptions of the operations of our subcontractors including transport companies, interruptions due to public measures (e.g. delayed or denied permissions), amendments of the import or export regulations, scarcity of energy and raw materials, interruptions of our operations beyond our control (e.g. by fire, water and machine damage) and obstruction of traffic routes. In such cases we shall inform the buyer in writing and in good time. If, due to these circumstances, the services or supplies are impossible, or if this impossibility is otherwise beyond our control, we shall be exempted from making the delivery without being subject to any claims for compensation. Compensation shall also not be owed if due to the afore mentioned circumstances the performance is only delayed.
- 12.9 We are not in default as long as the buyer is in default with the fulfilment of obligations towards us, including such obligations from other contracts.
- 12.10 If we are in default of delivery, the buyer must first grant us a reasonable extension. If this extension period passes without fulfilment on our part the buyer can assert his rights under the respective provisions of §§ 280, 281, 284, 286, 323 of the German Civil Code. Claims for compensation owing to an infringement of obligations, for whatever reason, can only be made under the proviso as cited in section 11 of these terms and conditions. If we have failed to make the delivery by a deadline specified in the contract or within a period specified in the contract, the customer can only withdraw from the contract without granting a reasonable extension if the contract expressly specifies that his interest in the goods depends on the punctuality of the delivery.

13. Financial circumstances of the buyer, payments, payment default

- 13.1 If the terms and conditions of payment are not fulfilled or if circumstances become known or apparent which, in our considered opinion, give rise to justified doubts in the credit worthiness of the customer or substantiate the assumption that the financial circumstances of the buyer have become so bad that there is a risk of non-payment, any outstanding deliveries will only be executed by us
- a) on advance payment in the case of goods which in terms of specifications, form, quantities etc. are only suitable for a particular buyer;

b) or, in all other cases, against cash payment for each delivery.

This applies in particular to such circumstances which already existed when the contract was concluded but of which we were and could not have been aware, for example if the buyer has not paid outstanding invoices or honoured bills of exchange or cheques.

13.2 Notwithstanding any other legal rights, in such cases we are also entitled to cease work on current orders or to demand acceptable guarantees and to withdraw from the contract after a reasonable period if such guarantees are not provided. In this case the customer is obliged to compensate us for all damages arising from the non-execution of the order.

14. Payments, defaults on payment, costs for legal prosecution

14.1 Unless agreed otherwise our invoices are due for payment immediately and in full.

14.2 Bills of exchange and cheques are accepted only in exceptional cases on the basis of an express agreement and only on account of performance. We charge discount expenses at the EURIBOR level plus 5 % from the due date for payment of the invoice up to the expiry date of the bill of exchange as well as the bill and cheque costs. Interest and costs for the discounting or the collection of bills of exchange shall be borne by the buyer. In the case of bills of exchange and cheques the date of clearance shall be the date of payment. If our bank refuses to discount a bill or if there are substantiated doubts that a bill will be discounted during the term of the bill we are entitled to return the bill and demand immediate cash payment.

14.3 If agreed advance payments are not made or if the payment is not made in compliance with the agreement, we can, after the expiry of a reasonable extension period, withdraw from the contract or demand compensation.

14.4 If the buyer is in default on payment, he is not entitled to dispose of the goods exclusively owned or co-owned by us without our consent. Section 15 of these terms and conditions lapses in this case. The buyer is further obliged to return goods exclusively owned or co-owned by us on request insofar as these are not to be released by us pursuant to section 15 of these terms and conditions. Our request for the return of the goods shall only be regarded as a withdrawal from the contract if we declare this expressly in writing or if this is stipulated by the law.

14.5 If the buyer fails to comply with the terms and conditions of payment he shall immediately pass on to us any payments received by him for accounts receivable assigned to us.

14.6 This does not prejudice our legal rights in the case of default on payment or other infringements of the buyer's obligations.

14.7 The buyer has to bear all costs, fees and expenses in connection with every legally successful prosecution against him outside Germany.

15. Reservation of ownership

- 15.1 We reserve the right to ownership of the goods supplied by us and of the products arising from the processing of such goods (reservation goods) until all of our current or future claims arising from our business dealings with the buyer are fulfilled. This also applies to a balance in our favour if individual or all receivables are included in a current account and the balance is drawn.
- 15.2 In this case the buyer shall bear the risk of damage or destruction of the goods.
- 15.3 The buyer is obliged to store and label the goods subject to reservation of ownership separately.
- 15.4 We are entitled to enter the premises of the buyer where goods subject to reservation of ownership are stored at any time during normal business hours to establish the inventory of the goods supplied by us.
- 15.5 The buyer shall store all goods belonging to us with due care and consideration. The buyer must insure such goods adequately, particularly against fire and theft. Any claims against the insurance company for damages referring to the reservation goods are thus hereby assigned to us to the level of the value of the reservation goods.
- 15.6 The buyer shall undertake any processing work for us without this leading to any obligations on our behalf. If the buyer processes reservation goods in combination with other goods we reserve ownership of the new products in the ratio of the value of the processed reservation goods to the other goods at the time of processing. The co-ownership shares arising from the connection, mixing or combination of the supplied goods with other goods is thus hereby transferred to us.
- 15.7 The buyer may only sell the supplied goods and the products arising from their processing, connection, mixing or combination with other goods in the course of orderly business transactions either for cash payment or, in the case of payment on account, subject to reservation of ownership. The transfer of goods by way of security, pledges or other dispositions which endanger our rights are not permitted. The entitlement to resell the goods shall lapse immediately if the buyer suspends payments, is in default of payment to us or undertakes any actions which could endanger our rights.
- 15.8 The buyer hereby assigns any receivables including securities and ancillary rights due to him from the reselling of the reservation goods or from any other legal reason to us for security amounting to the value of the resold reservation goods or, if the sales yield does not achieve the value of the goods, to the value of the sales yield. If the reservation goods are sold by the buyer with other goods, the buyer hereby assigns the purchase price claim for the reservation goods fully or, in the case of prior processing with other goods not belonging to us, to the value of the processed reservation goods. If such a sale is made at a total price the buyer hereby assigns to us the purchase price claim to the value of the reservation goods which are the subject of this purchase.
- 15.9 If the buyer includes receivables from the further sale of reservation goods in a current account arrangement with his customers, he hereby assigns to us any recognised final balance in his favour to the amount corresponding to the total amount of the receivables included in the current account from the further sale of our reservation goods.

- 15.10 The buyer may not enter into any agreement with his customers which could exclude or impair our rights in any way or which would preclude the advance assignment of the receivables.
- 15.11 If the buyer has already assigned receivables from the further sale of the goods supplied or to be supplied by us to a third party, in particular on the basis of recourse or non-recourse factoring, or has made any other agreements which could impair our current or future security rights pursuant to section 15, he shall notify us of this immediately. In the case of recourse factoring we are entitled to withdraw from the contract and to demand the return of goods which have already been supplied. The same applies in the case of non-recourse factoring if, according to the contract with the factor, the buyer cannot freely dispose of the purchase price of the account receivable.
- 15.12 The buyer will disclose and clearly designate to us all receivables due to him from third parties insofar as such receivables are based on material received from us.
- 15.13 As long as the buyer fulfils his obligations to us, the assignment shall be treated as a dormant assignment. At our request the buyer is obliged to inform his customers immediately about the assignment. We are also entitled to notification in this regard.
- 15.14 The buyer is authorised to collect accounts receivable. The collection authorisation can be revoked at any time.
- 15.15 In the case of infringements of the contract, in particular default on payment, we are entitled – without having to first withdraw from the contract – to demand the return of the reservation goods or to demand appropriate security. The buyer is obliged to immediately return the goods. In such cases the utilisation amount minus the utilisation costs shall be credited to the buyer.
- 15.16 If the reservation of ownership is exercised or the return of the goods demanded in accordance with these terms and conditions, this shall only be regarded as a withdrawal from the contract if we expressly declare this in writing or if the legal stipulations demand this.
- 15.17 If the value of the security exceeds our accounts receivable by more than 30 % we will release securities to this extent on request by the buyer. We shall decide which securities are to be released at our own discretion.
- 15.18 We shall be notified in writing by the buyer of any attachments by third parties against the reservation goods or the accounts receivable assigned to us citing all of the documents necessary for an intervention.
- 15.19 The costs of the intervention and, in particular, all of the court and out-of-court costs for the elimination of the pledges and retentions and for the recovery of the goods shall be borne by the buyer insofar as he is responsible for the incurrence of these costs.

16. Offset

The buyer is only entitled to offset our payment claims if the counter-claims have been expressly recognised by us in writing or are legally effective.

17. Place of performance, place of jurisdiction

17.1 The place of performance for the supplies is the works determined by us for the execution of the contract.

17.2 Place of performance for payments is Schwandorf.

17.3 Place of jurisdiction is Schwandorf.

18. Applicable law

The law of the Federal Republic of Germany shall apply. The application of international commercial law, particularly the laws on the international sale of moveable goods and the conclusion of international purchase contracts for moveable goods is excluded.

19. Separability clause

In the event that any individual provisions are invalid, this shall not prejudice the other provisions. The parties shall replace the invalid provision with a provision which comes as close as possible to the original economic intention.

20. Data protection

We hereby declare that any personal data received in relation to our business relationship, regardless of whether it refers to the buyer or to a third party, shall be processed in accordance with the German Data Protection Law.

Nabaltec AG