

# Standard Terms and Conditions of Purchase of Niederauer Mühle GmbH for Business Customers (valid as of: March 2022)

## 1. General Provisions / Scope of Application

- a) Our purchases are governed exclusively by our Standard Terms and Conditions of Purchase ("Terms & Conditions"). Unless we have expressly consented to their application in writing, we will not recognize any terms and conditions of the Supplier which are contrary to or vary from our own. Our Terms & Conditions apply exclusively even where we unconditionally accept the goods delivered even though we are aware that the Supplier's terms and conditions are contrary to our own.
- b) Our Terms & Conditions will also apply to all future business dealings with the Supplier.
- c) Where any specific agreements are made with the Supplier (including ancillary agreements, supplementary agreements and amendments) in individual cases, they will in all circumstances take precedence over these Terms & Conditions. Subject to any evidence to the contrary, a written agreement or our written confirmation will be sufficient evidence of the content of such agreements.
- d) Any references to the application of statutory provisions are only for the purposes of clarification. Even without such clarification, statutory provisions apply to the extent that the Terms & Conditions do not directly alter or expressly exclude them.

## 2. Delivery Times

- a) The agreed delivery/performance dates are binding. If the Supplier expects delivery to be delayed, it must notify us in writing without delay and must provide reasons for the delay as well as details of a new delivery/performance date. We will be entitled to rescind the contract if we are not in agreement with the new date offered and the Supplier refuses to deliver/perform within a reasonable additional period of time that we set for delivery/performance. If we agree to a new date offered by the Supplier, this will not constitute an extension of the contractually agreed delivery/performance date. The foregoing is without prejudice to our right to claim damages for late delivery.
- b) In the event of the Supplier's failure to make delivery or to make delivery within the agreed period or if the Supplier is in default, our rights – in particular as regards rescission and damages – will be governed by the statutory provisions. In particular, we will be entitled to demand damages in lieu of performance after we have granted the Supplier a reasonable additional period of time for performance and the Supplier has not performed within this period.
- c) If, in the case of installment and similar contracts, the Supplier is late with partial delivery/performance, we will be entitled to rescind the contract or demand damages in lieu of such partial delivery/performance after we have allowed the Supplier a reasonable additional period of time for any outstanding partial deliveries/performance.

## 3. Shipping

- a) Unless agreed otherwise, the Supplier will ship the goods at its expense and risk to the address stated in our order.
- b) The Supplier must comply with all relevant shipping and declaration rules and with any export or import procedures. Any damage incurred by us from failure to do so will be compensated by the Supplier.
- c) Unless otherwise agreed, the transport risk will not pass to us until the goods have been delivered.

## 4. Insurances

- a) Unless previously agreed with us, we will not be under a duty to bear insurance costs.
- b) By accepting our order, the Supplier agrees that it will, before making delivery or commencing the contracted work, take out third-party liability insurance that also covers product liability claims and includes adequate coverage for personal injuries, property damage and financial loss. Upon request, it will provide us with evidence of this.

## 5. Prices and Terms of Payments

- a) The price shown in the order is binding. In the absence of a written agreement to the contrary, the price includes "door-to-door" delivery and packaging. All prices are net prices to which VAT will be added at the statutory rate unless VAT is shown separately.
- b) Unless we have agreed separately with the Supplier, in an individual case, that it will send us a collective invoice, it must, immediately after dispatch of the goods, send us, for every order, its invoice by postal mail and include in the invoice the order number, details of whether the order is complete or, if applicable, details of the quantities/items that still have to be delivered. VAT must be shown separately. The nature and scope of the goods and services must be evident from the invoice. Payment is only due if we can verify every aspect of the invoice.
- c) Invoices will be paid within 14 days with a 3% discount or within 30 days net. The time limit for payment begins when we receive the invoice, but no earlier than on the day that the goods arrive at our designated place of delivery.
- d) If invoices are late or incomplete, we will be entitled to deduct the full discount amount from the invoice payment which is delayed correspondingly.
- e) Invoice factoring is not permitted without our written consent. The foregoing is without prejudice to § 354 a of the German Commercial Code (*Handelsgesetzbuch* – HGB).
- f) We will be entitled to the full range of set-off and retention rights provided by law.

## 6. Warranties and Guarantees

- a) Unless agreed otherwise below, the statutory warranty provisions apply in the case of defects in quality or title and where there are any other breaches by the Supplier.
- b) The Supplier is liable according to the statutory provisions in particular for ensuring that the goods have the agreed characteristics at the time that risk passes to us. Product descriptions which have become a part of the respective contract – in particular through identification or reference in our order – or which have been integrated in the contract in the same way as these Terms & Conditions will in any case be considered guarantees as to the characteristics of the goods. It is irrelevant for these purposes whether the product description originates from us, the Supplier or the manufacturer.
- c) The Supplier will be responsible for any expenses that are necessary for the purpose of inspecting the goods and curing defective performance even if it later transpires that there was actually no defect. Our liability for damages if we unjustifiably request a cure will remain unaffected; accordingly, we will only be liable where we knew no defect existed or were grossly negligent in not knowing that no defect existed.
- d) Without prejudice to our statutory rights and the provision in section 6 c), the following applies: If the Supplier does not comply with its duty to cure its defective performance – by, at our option, eliminating the defects (repair) or delivering goods free from defects (replacement) – within a reasonable period of time set by us, we will be entitled to eliminate the defects ourselves and to demand compensation from the Supplier for the necessary expenses of doing so or to demand an advance on the expenses. If the Supplier's attempt to provide a cure fails or it would be unreasonable to expect us to accept such attempt, we will not be required to set the Supplier a deadline for performance. We will inform the Supplier of circumstances of such kind without delay, and if possible, in advance.
- e) According to the statutory provisions, the Supplier will also be liable in particular for complying with the Equipment and Product Safety Act (*Gesetz über technische Arbeitsmittel*), the Machine Safety Act (*Maschinenschutzgesetz*), the accident prevention regulations laid down by the employers' liability insurance association, the Working Time Act (*Arbeitszeitgesetz*), the provisions of law applicable to the performance of the work, including but not limited to the EU market regulations, the requirements of food legislation and all other relevant legislative provisions and regulatory requirements.
- f) At the very least, the relevant statutory limitation periods apply.
- g) Where the Supplier delivers non-fungible goods, § 381(2) of the German Commercial

Code will not apply.

- h) If the Supplier provides services anywhere on our company premises, it may only use equipment and tools that have been tested pursuant to the accident prevention regulations for electrical plants and equipment (DGU-V3), and accordingly have affixed to them a current certification sticker.

## 7. Duty to Give Notice of Defects

The statutory provisions (§ 377 and § 381 of the German Commercial Code (*Handelsgesetzbuch* – HGB)) apply to the duties of a merchant (*Kaufmann*) to inspect goods and give notice of defects subject to the following proviso: We shall give notice of hidden defects orally or by telephone or by sending a notice of defect within two weeks after they have been discovered in the ordinary course of our business. In this respect, the supplier waives the objection of delayed notification of defects.

## 8. Statutory Limitation Period

- a) In the case of purchase contracts and contracts for work done and materials supplied, the Parties' reciprocal claims against one another will become statute-barred in accordance with the statutory provisions unless provided otherwise below.
- b) Notwithstanding § 438(1) no. 3 of the German Civil Code, the general period of limitation for claims for defects (material defects and defects of title (*Sach- und Rechtsmängel*)) is 3 years from the passing of risk. The limitation periods stipulated in § 438 (1) nos. 1 and 2 of the German Civil Code remain unaffected. Furthermore, claims arising from defects in title (*Rechtsmängel*) will not under any circumstances become time-barred where a third party would – in particular in the absence of a limitation period – still be entitled to assert such claims against us.
- c) The limitation periods that apply in sale of goods law, including the above extension, apply – to the extent provided by law – to all contractual claims for defects. Where we are also entitled to damages in tort due to a defect, the normal statutory limitation period (§§ 195, 199 of the German Civil Code) will apply unless the application of the limitation periods contained in sale of goods law would lead to a longer limitation period in an individual case.

## 9. Retention of Title (ROT)

We will not recognize any reservation of title to the goods by the Supplier.

## 10. Product Liability

- a) Where the Supplier is liable for damage caused by a product, it must, upon first demand, indemnify us against damages claims by third parties if the cause of the damage lay within the Supplier's sphere of control and organizational area and if it is liable for the damage. The foregoing will not affect any other statutory rights to which we are entitled.
- b) The liability of the Supplier for defective products pursuant to section 10 a) will also include a duty to reimburse us for any expenses pursuant to § 683 and § 670 of the German Civil Code arising from or in connection with any recall action carried out by us. Insofar as it is possible and reasonable for us to do so, we will inform the Supplier as to the nature and scope of any such recall and give it an opportunity to present its case. The foregoing will not affect any other statutory rights to which we are entitled.

## 11. Deterioration in Financial Circumstances

If, after the conclusion of the contract, it becomes apparent (e.g. through a petition for the commencement of insolvency proceedings) that the Supplier's poor financial circumstances (e.g. its difficulties in making payments or its cessation of payments) are likely to impact its ability to perform its obligations under the contract (counterperformance), we will be entitled by law to withhold performance of our obligations until the Supplier has performed or provided security for its counterperformance and – where appropriate, after setting it a deadline for counterperformance or security for counterperformance – to rescind the contract (§ 321 of the German Civil Code). The foregoing will not affect our right to claim damages.

## 12. Confidentiality and Use of Documents

- a) The Supplier is obliged to treat confidentially all technical data which become known to it in connection with the fulfillment of our orders.
  - b) The Supplier is not permitted to use, for any other purposes, any printed materials, drawings or models that we have provided to it or which were produced according to our specifications. Nor is it permitted to share same with any third parties. It must return the above-mentioned items upon our request. If the documents are lost, the Supplier must replace them at its own expense.
  - c) If the Supplier intentionally or negligently breaches the above duties, it will be obliged to pay us 3% of the contract value, but no less than € 10,000 unless proof of damage in a different amount is provided.
- This applies even if the contract has been terminated or already performed.  
The foregoing will not affect any other contractual or statutory rights to which we are entitled.

## 13. Place of Performance, Place of Jurisdiction, Applicable Law

- a) The place of performance for all goods or services will be the delivery address that we have specified. The place of performance for our payment obligations is Düren.
- b) If the Supplier is a merchant (*Kaufmann*), a public-law entity or a special fund under public law, the courts of Düren will have exclusive jurisdiction over any disputes, including disputes of an international nature, which arise directly or indirectly from this contractual relationship. The same will apply if the Supplier is a business within the meaning of § 14 of the German Civil Code. The foregoing is without prejudice to any overriding statutory provisions, in particular regarding exclusive jurisdiction.
- c) These Terms & Conditions and the entire legal relationship between the Parties are governed solely by the laws of the Federal Republic of Germany to the exclusion of its private international law rules and the U.N. Convention on the International Sale of Goods.