

General Terms and Conditions of Sale

I. Scope

1. Our deliveries and services are made exclusively on the basis of the following conditions. Any general terms and conditions of the buyer / orderer are hereby contradicted, unless we have expressly agreed in writing their validity. Our conditions of sale shall apply even if we carry out the delivery to the buyer without reservation in the knowledge of conflicting or deviating conditions of the buyer. By placing the order, at the latest upon receipt of the delivery of the ordered delivery items, the buyer acknowledges the sole liability of these General Terms of Delivery. Insofar as our General Terms and Conditions of Delivery do not contain any provisions, the statutory provisions apply.

II. Offer and Conclusion of Contract

1. Our offers are non-binding. Verbal agreements, and ancillary agreements, in particular verbal assurances of our employees or representatives, only become binding upon our written confirmation.
2. Through the respective order, the buyer submits an offer, which represents a binding contract offer. We can accept this offer within ten working days of receipt. A contract is only concluded by the written order confirmation on our part and is based exclusively on the content of the order confirmation and / or these delivery conditions. Verbal agreements or promises require the written confirmation of NEMS to be valid.
3. If after the conclusion of the contract unpredictable cost increases in the area of material and labor costs have occurred at NEMS, then we are entitled, at our reasonable discretion, to a corresponding increase in the agreed price.
4. Obvious errors, typographical, printing or arithmetical errors are not binding on us. In the case of a calculation error, we are entitled to correct the prices stated by us. Should this case occur, the purchaser is entitled to withdraw from the contract by giving written notice to us within one week after becoming aware of the error. Further claims of the purchaser are excluded.

III. Terms of Payment

1. Our claims are due for payment immediately upon receipt of the delivery and must be made without deductions, unless expressly agreed otherwise in writing.
2. The buyer is in default no later than ten days after receipt of our delivery, without the need for a reminder.
3. Payments by the buyer are only deemed to have taken place if NEMS can dispose of the amount.
4. If the buyer is in default of payment, NEMS is entitled to demand default interest at the statutory rate. The assertion of further damage caused by default remains unaffected.
5. All our prices are in euros ex delivery warehouse or factory but excluding the respective statutory sales tax, as well as packaging and shipping costs, which are calculated separately.
6. The customer may only offset undisputed or legally established claims. He is only entitled to rights of retention insofar as they are based on the same contractual relationship.
7. If NEMS recognizes after the conclusion of the contract the risk of insufficient efficiency of the customer, we are entitled to execute outstanding deliveries only against advance payment or security deposit or to take back the goods, if necessary to enter the buyer's business and take the goods away. In addition, we can prohibit the further processing of the delivered goods. The return is not a withdrawal from the contract. If the advance payments or securities have not been provided even after the expiration of a reasonable period of grace, we may withdraw from individual or all contracts in whole or in part. The assertion of further rights remains NEMS free.

IV. Retention of Title

1. Delivered goods remain our property (reserved goods) until the fulfillment of all claims, in particular those balance claims which we are entitled to in the context of business relations. This also applies to future and conditional claims, e.g. from reversed changes.
2. A sale of the goods subject to retention of title (reserved goods) is only permitted to the buyer in the proper course of business.
3. Should the buyer processes combine or mix the reserved goods with other goods, NEMS is entitled to co-ownership of the new article for the full invoice value of the reserved goods. Should NEMS ownership cease as a result of combining, mixing or processing, already at present the buyer transfers to NEMS his ownership, alternatively his expectant rights in the new stock or article to which he is entitled to in the amount of the invoice value of the reserved goods; in the event of processing, this shall be in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. The buyer is obligated to store the final product at no additional cost to NEMS.
4. The buyer is entitled to resell in the ordinary course of business, as far as he agrees a retention of title and is not in arrears; however, he hereby assigns to us all claims in the amount of the final invoice amount agreed with us (including VAT, insofar as this accrues), which accrue to him from the resale against his customers or third parties, regardless of whether the purchased item was sold without or after processing.
5. If the buyer defaults on the payment and if this indicates a threat to the feasibility of a not inconsiderable part of our claim, we are entitled to prohibit the further processing of the delivered goods, to retrieve the goods and, if necessary, to enter the customer's business. The return is not a withdrawal from the contract.
6. In the case of a seizure or if there are other impairments by third parties, the buyer must inform us immediately.
7. If the realizable value of the securities exceeds the total claims of NEMS to be secured by more than 10%, the buyer is entitled to request release to that extent.

V. Dimension, Weight, Quality

1. Deviations from dimension, weight and quality are permissible according to DIN or the applicable standard (+/- 10%). The weights are determined on calibrated scales and are relevant for invoicing. The weight verification is done by presenting the weighing protocol. Unless an individual weighing is usually carried out, the total weight of the consignment applies in each case.

VI. Shipping, Packaging, Passing of Risk

1. The costs of packaging and shipping are borne by the buyer. They will be shown separately on the invoice.
2. Unless the purchaser has made any provision, the shipment will be made in an appropriate manner in the usual packaging. A packaging which goes beyond the purpose of transport or other special protection, e.g. for longer term storage or warehousing, requires an express agreement.
3. Our delivery is ex works. For the observance of the delivery times, the time of dispatch ex works is decisive. If the goods can not be dispatched in due time without our fault, the delivery times with notification of the readiness for dispatch are deemed to be met.
4. The risk goes with the delivery of the item to the haulage contractor or the buyer himself over. If the handover or dispatch is delayed for reasons for which the buyer is responsible, the risk shall pass to the buyer on the day of notification of the readiness for dispatch of the delivery item.

5. In the event of damage in transit, the purchaser must immediately initiate an assessment of the facts with the responsible authorities.

VII. Delivery Dates, Arrears

1. Delivery periods begin on the date of our order confirmation, but not before complete clarification of all details of the order; The same applies to delivery dates. All delivery times and dates are subject to unpredictable production disruptions and timely self-supply by subcontractors, with whom we have concluded a congruent hedging transaction.
2. Unforeseeable, unavoidable events beyond NEMS's control, such as force majeure, war, natural disasters, strikes, lockouts, government action or similar events, exempt NEMS from its obligation to timely deliver or perform for its duration. Agreed periods are extended by the duration of the disturbance, the buyer is informed of the occurrence of the disruption in an appropriate manner. If the end of the disruption is not foreseeable or lasts more than two months, each party is entitled to withdraw from the contract.
3. For deadlines and dates that are not expressly designated as fixed in the order confirmation, the buyer can set us a reasonable period of grace for delivery at the earliest one week after expiry of the order. We can only be in default after expiration of this grace period. As soon as we come in delay of delivery, the orderer / buyer can withdraw from the contract after expiration of the reasonable period of grace set by him in writing. This right of withdrawal extends only to the not yet fulfilled part of the contract. However, if partial deliveries made are inapplicable to the buyer without the remaining delivery, he is entitled to withdraw from the entire contract.
4. If the purchaser is in default of acceptance or if he violates other obligations to cooperate, NEMS shall be entitled, without prejudice to its other rights, to store the delivery item appropriately at the risk and expense of the purchaser or to withdraw from the contract.
5. NEMS may, for justified reasons, carry out partial deliveries insofar as they are reasonable for the buyer.
6. International buyers (outside the Federal Republic of Germany) are responsible for customs clearance. Taxes that may be incurred or customs fees and other additional charges and costs will be borne by the buyer. Buyers within the EU territory, but outside of Germany, commit themselves to receive a confirmation of receipt in accordance with German VAT Implementing Regulation (UstDV) upon receipt of the goods and to send them to us.

VIII. Condition, Claims for Defects, Obligation to Examine

1. The goods are in accordance with the contract if they do not evade or only insignificantly deviate from the agreed specification at the time of the transfer of risk. The quality is based exclusively on the concrete written agreements between the parties concerning the characteristics, qualities and management characteristics of the delivery item. A warranty for a specific purpose or suitability is only accepted insofar as this has been expressly agreed; Incidentally, the suitability and use risk is the sole responsibility of the buyer. We are not liable for deterioration, sinking or improper handling of the goods after the transfer of risk.
2. Contents of the agreed specification and an expressly agreed purpose of use does not constitute a guarantee; the assumption of a guarantee requires a written agreement.
3. Buyer's rights due to defects in the delivery item require that he checks the delivery item after delivery and notifies NEMS of any defects stating the invoice number without delay, but no later than two weeks after delivery; obvious transport damage must be reported to us in writing without delay. Hidden defects must be reported in writing to NEMS immediately after their discovery.
4. In the case of complaints, the buyer must immediately give us the opportunity to inspect the rejected goods; upon request, the goods complained about or a sample of them shall be made available to us at our expense. In the case of unjustified complaints, the buyer assumes the freight and handling costs as well as the costs of the inspection effort.
5. For goods sold as declassified material, e.g. so-called II-a material, the buyer has no warranty claims regarding the specified errors and those with which he usually has to reckon with declassified material.
6. If there is a defect, we shall at our option and under consideration of the interests of the buyer, provide supplementary performance by replacement or by repair. If the supplementary performance is not successfully carried out by us within a reasonable period of time, then the buyer can set us a reasonable deadline for subsequent performance, after which he can either reduce the purchase price or withdraw from the contract.
7. The limitation period for the rights of the buyer due to defects is twelve months since the delivery of the item to the buyer. For damage claims of the buyer for other reasons than defects of the delivery item and as well as the rights of the buyer in case of fraudulently concealed or deliberately caused defects, it remains at the statutory limitation period.
8. Recourse claims of the buyer according to § 478 BGB against us are limited to the legal extent of the claims asserted against the buyer by third parties and assume that the buyer has complied with his obligation to object in accordance with § 377 HGB.
9. If the buyer sells the delivery item, he releases NEMS in the internal relationship of product liability claims of third parties, insofar as he is responsible for the fault causing the liability.

IX. Limitations of Liability

1. Unless otherwise stipulated in these conditions, NEMS shall only be liable for damages in the case of intent, gross negligence and culpable violation of essential contractual obligations; incidentally, liability for simple negligence is excluded. Essential are all contractual obligations, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance of which the contractual partner may regularly rely. In the case of culpable violation of essential contractual obligations, we are liable - except in cases of intent or gross negligence - only for the contractually typical, foreseeable damage.
2. The above limitations of liability do not apply to injury of life, body and health.
3. Claims under the Product Liability Act remain unaffected.
4. The aforementioned limitations of liability also apply in the case of our legal representatives or vicarious agents.

X. Export Control

1. We point out that the buyer is obliged to gain knowledge about possible export restrictions, in particular embargoes towards individual countries, companies or individuals, and to keep them up-to-date. Furthermore, he undertakes to comply with all relevant requirements and, if necessary, to demand this from his customers.
2. The export of some of the goods we trade is subject to approval by the Federal Office of Economics and Export Control (BAFA). If the permit is required, our customers commit to apply for it on export.
3. If a buyer or his agent, who is resident outside the Federal Republic of Germany, collects or ships goods or sends them to the unincorporated territory, the buyer must provide us with the proof of export required for tax purposes. If this proof is not provided, then the buyer has to pay the VAT rate valid for deliveries within the FRG from the invoice amount.

XI. Final Provisions

1. Rights and obligations under the supply contract may not be transferred in whole or in part to third parties without our written permission.
2. Changes and additions to the contract as well as additional agreements must be made in writing. This also applies to a waiver of this written form clause.
3. If a provision of the contract and / or these conditions of sale is wholly or partially invalid, the validity of the remaining provisions shall remain unaffected. The contracting parties undertake to agree an effective provision which comes closest to what was intended by the meaning of the invalid or void provision instead of the invalid or void provision.
4. Relevant is the German version of these conditions of sale. Other language versions are merely translations.
5. The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Düsseldorf. However, NEMS is entitled to sue the buyer at any other place of jurisdiction.
6. The law of the Federal Republic of Germany applies to the entire legal relationship between us and the client, with the exception of the rules on Private International Law. Neither the United Nations Convention on Contracts for the International Sale of Goods (CISG) nor any other international treaties will apply, even after adoption into German law.

As of: January 2018