

## **GENERAL PURCHASING CONDITIONS**

**Unless anything different has been expressly agreed to, these purchasing conditions apply to business between, on the one side, NORKA GmbH & Co. KG and NORKA Grundstücksverwaltung GmbH & Co. KG - hereinafter referred to as the "client" - and on the other side, companies - hereinafter referred to individually as the "contractor". These purchasing conditions shall also govern all future business between the contractual parties.**

### **1. Orders, contract conclusion and declarations**

(1) Only commissions or orders made in writing bind the client. This also applies to amendments to the contract. Arrangements made by telephone or in person must be confirmed in writing.

(2) The contract between the client and the contractor is effective once the client has made a written order. If the client requests information or a quote from the contractor prior to the order, this shall not be construed to be an order. The contractor must confirm the order without delay and in writing.

(3) Legally-relevant statements and announcements which the contractor must make to the client after the contract has been concluded (e.g. setting of deadlines, payment reminders, termination) must be made in writing to be effective.

### **2. Prices, dispatch costs and goods receipt area**

(1) The price given in the order is binding.

(2) The client reserves the right to choose the means, mode and route of dispatch, as well as the packaging used.

(3) If a written agreement has not been made, the price includes delivery and transport to the location given in the order, as well as packaging.

(4) If the point of destination has not been given and if nothing else has been arranged, delivery must be made to the factory of the client in Dörverden-Hülßen. Goods are accepted at the goods receipt area of the factory from Monday to Thursday 7.30 am – 2 pm. Deliveries will only be accepted on Fridays if the purchasing department of the client has agreed to this beforehand. The respective point of destination is also the place of performance.

(5) The client's order number must be given on all transport documents or any other paperwork. Otherwise — or if the dispatch and delivery papers are improper in any other way — the client shall not be held accountable for the resulting handling and payment delays.

(6) If the client has confirmed in writing that he shall bear the shipping and handling costs, the contractor must choose the cheapest mode of dispatch. The shipping and handling costs must be listed on the invoice separately, and relevant receipts must be provided.

### **3. Delivery date and transfer of risk**

(1) The delivery date or deadline given in the order is binding. The contractor bears the procurement risk for his goods and services. He must arrange his production so as to ensure delivery can always be made punctually.

(2) The contractor must inform the client without delay if a situation arises, or facts come to his attention, which make postponement of the delivery inevitable. When he does so he must also state a new and binding delivery date.

(3) If the last day on which the delivery can be made is fixed contractually, the contractor falls into arrears at the end of this day, irrespective of whether the client sends a payment reminder. The contractor is liable for damage in full arising from late delivery.

(4) If a delivery is late, the client may enforce his legal rights without restriction. In particular, the client is entitled to withdraw from the contract and claim damages instead of performance following the unproductive expiry of an added and appropriate period of time for performance. If a framework agreement has been concluded or if there is a continuing obligation between the client and contractor, the client still has the right to terminate this contract for cause if the contractor fails to meet the deadline for an individual delivery and the additional period of time given for performance (unless this is unnecessary) expires unproductively, or if the contractor, despite repeated reminders, still does not deliver on time.

(5) The risk of destruction and deterioration is not transferred to the client until the good is delivered to the place of performance, even if dispatch of the good has been arranged. If a formal acceptance procedure has been arranged, this is final for the transfer of risk. In the case of a formal acceptance procedure, statutory provisions governing contracts for work and services shall also apply to the entire procedure accordingly.

(6) Advance, part or excess deliveries which have not been arranged do not have to be accepted by the client.

### **4. Contractual penalty**

(1) If the contractor delivers late, the client may claim a contractual penalty of 0.2% of the net price of the late good per working day, though not more than 5% of the net price of the late good.

(2) The client is entitled to request from the contractor performance, the contractual penalty and, as a minimum sum, damages in accordance with statutory provisions. This does not affect his right to make further claims for damages. If the client accepts the late good, he can claim the contractual penalty, at the latest, on the final invoice, even if he did not state his right to do so upon acceptance of the good.

(3) Paragraphs 1 and 2 apply accordingly to the case where the contractor is late in rectifying a shortage or defect. The contractual penalty is then determined by taking the period of time until the rectification of the defect or shortage and the net price of the good or goods affected by the defect or shortage.

## **5. Guarantee**

(1) In the case of defects or shortages, the client, irrespective of the legal nature of the contract concluded, has the option to have the defect or shortage rectified, or to be supplied with a good without defects or shortages. The guarantee period is a minimum of 24 months. Otherwise statutory provisions apply.

(2) All product descriptions which have become subject of the respective contract, particularly by way of description or reference in the order, apply as an agreement with respect to the nature of the goods. It is irrelevant whether this product description was provided by the client, the contractor or the manufacturer.

(3) If the contractor does not meet his guarantee obligation within an appropriate time period set by the client, the client is entitled, at the contractor's expense, to rectify the defect or shortage or to acquire a replacement delivery from a different supplier. If subsequent performance by the contractor has failed or is unreasonable for the client (e.g. due to particular urgency, danger to operational safety or the disproportionate risk of damage), no time period need be set. In this instance the contractor must be informed without delay and, if possible, beforehand.

(4) Upon receipt the client will check the good supplied for visible damage and discrepancies with respect to content and quantity. Complaints concerning any such defects or discrepancies must be made within eight calendar days. In addition, the client will report — also within eight calendar days — any defects as soon as they come to light in the proper course of business. In the instances cited the supplier waives any right to object to late defect claims.

(5) In the case of hidden defects, the contractor must provide compensation for personnel and material costs wasted. The client is under no obligation to prove that the personnel could have been assigned to a different task.

(6) The limitation period for actions concerning the guarantee is extended for the time period from when the contractor receives written notice of the defect from the client until the defect is rectified or the rectification is denied conclusively by the contractor.

## **6. Liability**

(1) Statutory provisions govern the contractor's liability for damage the client suffers. The contractor is liable for negligence of any kind. In particular, the contractor could be held liable for financial losses, secondary damage and consequential damage.

(2) If the contractor is accountable for defective products, he must release the client from claims made by third parties if the cause was in his area of control or responsibility and if he himself is liable in respect of third parties.

(3) The contractor must take out and maintain a product liability insurance policy with a suitable insured sum that must not be less than EUR 5 million per personal injury or case of property damage.

## **7. Spare parts**

(1) The contractor must keep spare parts for the products supplied to the client for at least 10 years following delivery.

(2) If the contractor intends to halt production of spare parts for the products supplied to the client, he must inform the client of this without delay after this decision has been taken. This decision must be at least 12 months before production stops. In this case the client is entitled to make a final order of spare parts which must be processed by the contractor despite the intended production stop. Otherwise he must pay compensation for damage suffered by the client due to missing spare parts. This damage also includes financial losses, secondary damage and consequential damage.

## **8. Title protection**

(1) The contractor is only permitted to retain the title of products if the retention is in connection with the client's payment obligations for products for which the contractor has reserved the title. Extended or prolonged title retentions in particular are impermissible.

(2) Tools, equipment and models which the client makes available to the contractor or which are produced for contractual purposes and for which the contractor charges the client separately, remain the property of the client or pass into his ownership. The contractor must indicate that they are the property of the client, look after them carefully, protect them from damage of any kind and only use them for contractual purposes.

(3) The client retains the title for, and copyrights to, diagrams, plans, drawings, calculations, implementation instructions, product descriptions and other documents which he produced. Such documents must be used for contractual performance only; kept confidential in respect of third parties; and returned to the client once the contract has been discharged.

## **9. Third-party trademark rights**

(1) The contractor is liable if any patents or third-party domestic or international trademark rights are breached by the good he supplies or its use.

(2) The contractor must release the client from all claims made to him by third parties arising from breaches of the industrial property rights cited in paragraph 1 and compensate the client for all necessary expenses in connection with this claim. This is irrespective of whether the contractor is to blame or not.

## **10. Payment conditions**

(1) Provided no other individual agreements have been made with the contractor, the following payment conditions apply. If payment is made within 10 days after complete delivery and receipt of the invoice, the client is entitled to deduct 3% from the net total of the invoice. Otherwise, the net invoice amount is paid within 30 days after the receipt of the good and invoice. The payment date is the day the payment is made (e.g. funds leaving a bank account). The delivery is only complete upon delivery of installation instructions, operating instructions, maintenance regulations, drawings, certificates and any other documents and papers (including those concerning duty, imports, registration, tests etc.) which have been requested or normally come with the product. If a formal acceptance procedure has been arranged, the client must pay within 10 days to receive a 3% discount, or pay the net amount within 30 days after completion of the product, its formal acceptance, the delivery of drawings, documents and certificates requested, and the receipt of the final invoice.

(2) The client does not have to pay interest when the payment becomes due. If payment is late the client must pay interest at the rate of five percentage points above the base rate in accordance with section 247 of the German Civil Code. Statutory provisions govern when the client's payment is late. However, the contractor must send a payment reminder in any case.

(3) Within the bounds of the law the client is entitled to set off payments, has a right of lien and can make objections due to non-performance of the contract. In particular, he is entitled to withhold payments which are due whilst he still has outstanding claims made to the contractor regarding incomplete or defective goods or services. Unconditional payment does not constitute acceptance that the good or service has been provided suitably or that an invoice has been properly issued.

(4) Setting off, or enforcing a right of lien in respect of the client's claims is only permissible if the requests for payment are legally-established or recognised by the client.

(5) In the invoice has not be issued correctly, the contractor shall bear any costs thus incurred. An incorrectly-issued invoice does not cause the contractor's payment claims to be due.

## **11. Confidentiality**

(1) The contractor and client commit to keeping all matters concerning an order confidential unless anything to the contrary has been arranged. The contractual parties will make sure that associated companies also comply with this obligation to confidentiality. Associated companies are those described under section 15 ff. of the German Companies Act and also have a direct or indirect holding of 25%.

(2) This obligation does not apply to generally-accessible information and the obligation to disclose information to courts and authorities. In this case, the contractor must inform the client in writing before this information is disclosed.

(3) If this agreement is breached, the injured contractual party can claim a contractual penalty of EUR 10 000. This does not affect the party's right to make further claims due to the breach of contractual obligations.

## **12. Assignment prohibition**

(1) The contractor is not permitted to assign to third parties his claims from this contractual relationship. This does not apply to claims for payment. If claims are assigned, the contractor will inform the client of this without delay.

(2) If assignment is effective in accordance with section 354a of the German Commercial Code, the client's right to also set off counterclaims in respect of the new creditor shall not be affected.

## **13. Binding force, court of jurisdiction and applicable law**

(1) Only these general purchasing conditions shall apply. The contractor's terms and conditions only apply if the client has agreed to them expressly in writing. Individual agreements made between the client and the contractor take precedence over these purchasing conditions.

(2) Unless anything to the contrary has been arranged, the place of performance for both sides, and the sole — and international — place of jurisdiction for all disputes arising from the contractual relationship, is Hamburg. However, the client is also entitled to choose the general place of jurisdiction of the contractor.

(3) The laws of Germany govern this contract to the exclusion of the UN Convention on Contracts for the International Sales of Goods.

(State: August 2009)