

## Terms & Conditions

### 1 General

- 1.1 These terms and conditions are subject to the laws of the Federal Republic of Germany. All legal transactions underlie the following terms and conditions. In contracts with registered traders, these conditions shall also apply to all future legal transactions without further agreement. We expressly object to deviating terms and conditions of our contractual partners. At the latest with the acceptance of the merchandise or service by the signatory, these terms and conditions shall be considered to be accepted, even if he has expressly objected to them. Oral collateral agreements shall be legally void.
- 1.2 Cost estimates are non-binding until the final placing of order. We have the right to pass on substantial price increases resulting from increased procurement costs occurring before the final placing of order or during the planning of projects.
- 1.3 We expressly reserve unrestricted proprietary rights of use and exploitation and other intellectual property rights to cost estimates, drafts and any other documents. Disclosure and exploitation to third parties shall only be authorised with our prior permission. Upon request, such documents shall be released to us promptly.

### 2 Offer, acceptance of order and withdrawal

- 2.1 Our offers are non-binding and subject to prior sale.
- 2.2 We assume no liability for the accuracy of manufacturer information.
- 2.3 If our order confirmation deviates from the customer's order and these deviations are not objected in writing within 8 days of the date of issue, the order confirmation is legally binding.
- 2.4 If the buyer cancels the agreement without the right to cancel, we shall be authorised to claim damages at an estimated lump sum of 15% of the net order value, unless the other contractual party can prove that damage is not or substantially lower than the estimate lump sum. Our right to calculate a damage tangibly shall remain unaffected by this clause.

### 3 Delivery period, delivery and dispatch. Passing of risk

- 3.1 Delivery periods are non-binding. In case of unforeseeable events, such as industrial action, operational disturbance, delayed deliveries by our own suppliers etc. the delivery period shall be extended to a reasonable extent. If the above-mentioned events and/or force majeure render delivery and/or service impossible, we will be released from the delivery obligation. Any claims for damages of the customer are excluded, unless the delay in delivery including non-fulfilment would have been caused by wilful intent or gross negligence.
- 3.2 In case of default, then after expiry of a reasonable period of grace, the customer can withdraw only for those parts of the delivery which have not been reported as ready to dispatch by that date. Otherwise, the provisions of clause 2.4 apply.
- 3.3 Dispatch is at the risk of the customer. Place of performance and fulfillment is Frankfurt am Main.
- 3.4 In case of carriage free delivery, risk is assigned to the customer:
  - a. for deliveries that have been brought for forwarding or pick up. By request of the customer, the delivery can be covered by transport insurance.
  - b. for deliveries with mounting or assembly on the day of acceptance in the customer's operations or, if agreed, after perfect test operation.

- 3.5 If the customer has contributed to the default of the delivery by culpable conduct, the notification of the readiness for dispatch in the sense of legal liability shall be subject to the provisions of clause 3.3. The goods shall then be stored at the customer's risk and cost. The seller reserves his right to charge 1% of the goods' net value per month or part thereof.
- 3.6 Partial deliveries are permissible.
- 3.7 Make-and-hold orders are valid for a maximum of 12 months. After a period of 12 months we reserve the right to dispatch existing remaining quantities or cancel the remaining quantities upon return of any volume discounts.

#### **4 Rates, purchase commitment, return of goods and payment**

- 4.1 Purchases shall be billed in accordance with the valid corresponding current market price and are subject to value-added tax at the statutory rate. The manufacturer's metal and/or currency surcharges will be billed.
- 4.2 A flat fee for postage and packaging shall be billed for the delivery.
- 4.3 If the customer is in default of acceptance of delivery, we are entitled to claim either the whole or a proportion of the contract or to withdraw from the contract. In this case the enforcement of compensation of damages for non-performance shall be reserved. Our claim for compensation of damages shall amount, unless further proof can be provided, to 30% of the net value of ordered goods. The right to assert higher claims for compensation of damages shall not be precluded.
- 4.4 We are authorised but not obligated to give a credit note to the customer for goods returned without any eligible reason for rejection with the deduction of 10% of the purchase price — but at least EUR 20.00 + VAT — for administrative expense. If the goods are damaged, we shall further be authorised to deduct loss of value from the credit note. Any shipment and packaging costs incurred can be deducted from the credit note.
- 4.5 The return of goods shall be free of charge including packaging. The transport shall be at the sender's risk.
- 4.6 Payment has to be effected within 30 days after invoice date without discount or within 10 days less 2% discount, if not expressly otherwise agreed. The buyer shall be in default after expiry of the deadline without any further warning.
- 4.7 We reserve the right to set payments off against the oldest current invoice. No discount shall be granted if any due invoices are still outstanding. On principle, no discount shall be granted on repair orders.
- 4.8 In individual cases we reserve the right to request advance payment, cash on delivery or cash before delivery.
- 4.9 In the event of delay of payment we are entitled to charge interests at 8% of the base rate in accordance with the German Civil Code (Bürgerliches Gesetzbuch — BGB) in conjunction with sec. 247. Reminder fees shall be billed at EUR 30.00. In other respects, the provisions of sec. 288 of the German Civil Code (BGB) shall apply.
- 4.10 The offset of counterclaims that have been determined non-legally by the customer shall not be permitted. In other respects, the provisions of clause 6.4 shall apply.

#### **5 Acceptance**

- 5.1 The customer shall not be permitted to refuse acceptance of delivery due to insignificant defects.

## **6 Material defects**

The supplier shall be liable for defects to quality as follows:

- 6.1 At the discretion of the supplier, all of those parts or services displaying a material defect within the limitation period are to be repaired, replaced or provided again free, provided that the cause of the defect was already present at the time of passing of risk.
- 6.2 Warranty claims expire in 12 months. This shall not apply if longer periods apply according to sec. 438 para. 1 no. 2 (buildings and things that have been used for buildings), sec. 445b (recourse claim) and 634a para. 1 no. 2 (building defects) of the German Civil Code (BGB) or in cases of damage to life, limb or health, in cases in which the supplier infringes his obligations intentionally or by gross negligence and if a defect is fraudulently concealed. The statutory provisions on the suspension, interruption and recommencement of the running of time shall remain unaffected.
- 6.3 The customer must provide the supplier with notification of material defects without delay and in writing.
- 6.4 In case of a notification of defects, the customer may withhold payments to an amount that is in a reasonable proportion to the defect. The customer may retain payments only if a notification of defects is given which is justified beyond doubt. If the notification of defects was unjustified, the supplier shall be entitled to demand the reimbursement of expenses incurred by the customer.
- 6.5 The supplier shall first be given the opportunity to carry out a supplementary performance within a reasonable period of time.
- 6.6 If the supplementary performance is not successful, the customer may withdraw from the contract or reduce the cost - regardless of any possible claims for compensation in accordance with clause 8.
- 6.7 There shall be no claims for defects where the discrepancy from the agreed condition is insignificant, where the impairment of use is insignificant, where there is normal wear and tear or where damages arise after the passing of risk as a consequence of incorrect or careless handling, excessive operational demands, unsuitable equipment or as a consequence of special exterior influences which in the agreement were not assumed. If the customer or a third party has carried out improper modifications or repair work, claims of defects for these or for results incurred from these shall not apply either.
- 6.8 The customer shall not be entitled to claim expenditures required for the purpose of the supplementary performance, in particular carriage, road, labour cost and cost of materials, as far as the expenditures are increased because the object of the delivery has subsequently been forwarded to a location other than the customer's place of business. Furthermore, the supplier may refuse to pay the expenses necessary for the purpose of supplementary performance, provided that the associated costs are disproportionately high. Otherwise, the statutory provision of sec. 439 para. 2 to 4 BGB (German Civil Code) shall apply.
- 6.9 The customer's right of recourse against the supplier according to sec. 445a, 478 (recourses of the businessman) of the German Civil Code (BGB) is limited to cases where the customer has not reached an agreement with its purchaser which exceeds the extent of the statutory claims for defects. In addition, clause 8 shall apply correspondingly to the extent of the claims for defects of the customer against the supplier in accordance with sec. 445a para. 1 of the German Civil Code (BGB).
- 6.10 As for the rest, the provisions of clause 8 (Other claims for damages) shall apply to any damage claims. More extensive claims or claims other than those regulated in this clause 6 of the customer against the supplier and his subcontractors due to material defect are excluded.

## **7 Impossibility; Amendment**

- 7.1 Insofar as the delivery is impossible, the customer shall be entitled to claim damages, unless the supplier is not attributable for the impossibility of performance. However, the customer's entitlement to compensation shall be restricted to 10% of the value of that component of the delivery which cannot be put into appropriate operation, due to the impossibility of performance. This limitation shall not apply in the case of mandatory liability based on wilful intent, gross negligence or injury of life, limb or health; a change of the burden of proof to the disadvantage of the customer will not be connected thereto. The right of the customer to withdraw from the contract shall remain unaffected.

## **8 Other claims for damages**

- 8.1 Claims for damages and reimbursement of expenses to the customer (hereinafter referred to as 'claims for damages'), regardless on whichever legal grounds, in particular owing to a breach of duties arising from contractual obligations and tort liability, shall be excluded.
- 8.2 This does not apply where liability is legally mandated, such as under the Product Liability Act (Produkthaftungsgesetz), in cases of wilful intent, gross negligence, in cases of injury to life, limb or health, failure to fulfil essential contractual duties. However, a claim for damages due to a breach of major contractual obligations shall be restricted to contractually typical, foreseeable damage insofar as wilful intent or gross negligence is not existent or there is liability due to injury of life, limb or health. A change of the burden of proof to the disadvantage of the customer will not be connected to the above-mentioned clauses.
- 8.3 Insofar as the customer is entitled to claims for damages in accordance to clause 7, then these claims fall under a statute of limitation in accordance to clause 6.2. The legal provisions for limitation periods apply to claims for damages that fall under the Product Liability Act (Produkthaftungsgesetz).

## **9 Title retention**

- 9.1 All items delivered by us shall remain our property until payment of the full sales price including any possible secondary compensation has been made. In the case of outstanding accounts, title retention on all products delivered by us shall be deemed to be a security for our payment balance requests.
- 9.2 The handling and processing of our reserved goods takes place according to the provisions that the seller shall be the valid manufacturer of the new object. If the proprietorship of the new object is passed on to the customer or a third party, we shall pass into co-ownership in the ratio of the invoice value of the respective goods.
- 9.3 The customer shall only be entitled and authorised to resell, use or process the reserved goods in lawful business activities if he has already assigned all receivables and ancillary rights from further sale to us and informs his purchaser of the existing title retention.
- We can request the customer to announce all debtors of the assigned book account and provide us with all details required for collection. The customer shall have revocable authorisation to submit to us the relevant documents and disclose the relevant assigned book accounts.
- 9.4 If the customer breaches the contract, particularly in the event of delayed payment, we reserve the right to cancel the contract. In this case we shall be authorised to claim back the goods and charge a flat rate handling fee of 30% of the net value of goods.

9.5 Without delay, we shall be informed of any third party access to goods delivered by us that are subject to title retention.

9.6 At our request at any time, the client shall grant us information about the whereabouts of delivered goods. This also applies to any goods for which we merely retain a co-ownership portion.

## **10 Repairs**

10.1 If the customer wishes to receive a cost estimate before the repair is carried out, he shall expressly request this. The customer may be liable for any costs incurred in generating a cost estimate.

10.2 Repairs shall be made without warranty if no notice of defects has been given.

10.3 We shall have the option of either carrying out the repair in-house or commissioning an external workshop. The dispatch is realised at the risk and expense of the customer.

## **11 Export control regulations**

11.1 The delivered goods may be subject to German or international embargo regulations. The customer shall check the exportability of our delivered goods and shall be liable for the compliance with any export regulations through to the end user. Violations of export regulations are liable to prosecution.

## **12 Data protection**

12.1 Please note that we shall utilise and save your personal data for business purposes with the aid of electronic data processing in accordance with the provisions of sec. 26 of the Federal Data Protection Act (Bundesdatenschutzgesetz — BDSG).

## **13 Partial Ineffectiveness**

13.1 Should one or several provisions of these conditions be ineffective, then the effectiveness of the remaining provisions will not be affected.

## **14 Place of fulfilment and jurisdiction**

14.1 The place of fulfilment and the sole jurisdiction for any disputes arising between the parties directly or indirectly from this contractual relationship is Frankfurt am Main. With regards to the place of jurisdiction, this shall only be to the extent that the customer is a registered trader or legal entity under public law or a public lawful special asset.

14.2 With regards to foreign deliveries, the place of jurisdiction shall be the court of the capital of the country in which the customer has his place of business, instead of that of the customer's place of business.

14.3 As for the rest, the legal place of jurisdiction shall apply.

## **15 Small orders**

15.1 We reserve the right to charge proportional handling fees for small orders (net value of goods below EUR 100.00) in the amount of EUR 20.00.

**16 Packaging**

16.1 NIES electronic gmbh exclusively uses packaging which can be re-used or disposed of without difficulty by the customer. In accordance with the Packaging Ordinance (VerpackVO), NIES electronic gmbh is involved in systems that collect and accept packaging for the recycling of materials nationwide within the sales territory of NIES electronic gmbh (limited to the Federal Republic of Germany). Thereby an obligation of NIES electronic gmbh to accept the return of sales packaging shall not apply.

A return of transport packaging from NIES electronic gmbh shall occur as free mailing to the business place of NIES electronic gmbh, Frankfurt.

**17 Supplementary provisions**

17.1 Additionally, the general terms of delivery for products and performance of the electrical industry apply, unless otherwise set within the provisions at hand.

**(These terms and conditions are correct as of April 2018)**