

# Nabaltec AG General Terms and Conditions of Purchase

Version dated 01.01.2016

## § 1 General

- (1) Our terms and conditions of purchase shall apply exclusively; we do not acknowledge any conflicting terms and conditions nor any terms and conditions of the supplier that deviate from our terms and conditions of purchase unless we have expressly agreed in writing to their application. Our terms and conditions of purchase shall also apply even if we accept the delivery of the supplier without reservation in the knowledge of terms and conditions of the supplier that conflict or deviate from our own terms and conditions.
- (2) All agreements concluded between the supplier and ourselves pertaining to the performance of this contract are laid down in writing in this contract.
- (3) Our terms and conditions of purchase shall apply solely vis-a-vis entrepreneurs in accordance with § 310 (1) BGB (German Civil Code). Our terms and conditions of purchase shall also apply for all future business dealings with the supplier.
- (4) Furthermore, our technical delivery conditions shall apply in their respective latest version.

## § 2 Order, conclusion and performance of the contract, non-assignment clause

- (1) Unless other binding periods are provided for individually in writing, the supplier is obliged to accept our order within a period of 7 days after its receipt.
- (2) We retain all property rights and copyrights to illustrations, drawings, calculations and other documents; these may not be made accessible to third parties without our express written approval. They are to be used exclusively for production based on our order; they must be returned to us without request on conclusion of the order. They must be kept secret from third parties, in this respect the regulation in § 8 (4) shall apply additionally.
- (3) Transfer of the order to third parties, in full or in part, requires our prior approval.
- (4) Assignment of claims against us arising from our order is only permitted with our approval.
- (5) Drawings and static calculations must be submitted to us in the required numbers and free of charge on our request. In the case of electronic transmission, drawings must be sent in DWG format (or PDF) and static calculations in PDF format.

## § 3 Prices and Terms of Payment

- (1) The price indicated in the order is binding.
- (2) Delivery "free domicile" including loading and packaging is likewise included.
- (3) The prices indicated are net end prices; VAT to the currently applicable amount of ... must be added to these and indicated separately.
- (4) We are entitled to the mandatory rights of offset and retention to their legal extent.
- (5) Invoices can only be processed by us if these include the order number stated in our order – in compliance with the specifications in our order; the supplier shall be liable for all consequences arising from non-compliance of this obligation unless he can prove he is not responsible for these.
- (6) Unless otherwise agreed, the invoices shall be paid either within 14 days after receipt of delivery and invoice with a cash discount of 2% or without deduction within 30 days at our own discretion.
- (7) The quantities and number of units determined by us shall be decisive for the payment of the invoice.
- (8) In the event invoices are sent by electronic means, these must be sent exclusively to the email address [rechnungen@nabaltec.de](mailto:rechnungen@nabaltec.de).

## § Delivery period and delay in delivery

- (1) The delivery period indicated in the order is binding.
- (2) In the event of a delay in delivery we shall be entitled to assert a flat-rate claim for delay amounting to 1.5 % of the value of the delivery for each full week of delay; however not more than a flat-rate of maximum 5 % of the value of the delivery. Whereby the supplier is entitled to prove that no or significantly lower damage was incurred as a result of the delay. This shall in no way affect more extensive statutory claims or claims agreed in individual contracts (e.g. withdrawal and damages instead of performance of the contract).

- (3) In the case of the delivery of chemicals or other dangerous goods the relevant DIN safety data sheets must be attached to the order confirmation or at the latest to the delivery itself.
- (4) On our request the supplier is obliged to take back the packaging free of charge.
- (5) The delivery shall be made free our works at the risk of the supplier. The order number and the department must be indicated in all relevant documents (e.g. letters, delivery notifications, consignment notes, accompanying documents, package addresses, invoices, delivery notes etc.).
- (6) The delivery must be accompanied by a delivery note when delivery of the goods is made to our incoming goods department.

#### **§ 5 Inspection of defects**

The supplier undertakes to carry out a final goods inspection and on request of Nabaltec shall conclude a quality assurance agreement with us.

#### **§ 6 Liability for material defects and defects of title in the case of purchase contracts, liability for contractual obligations**

- (1) We are entitled to all statutory rights in the event of material defects and defects of title to their full extent.  
In particular exceeding the specifications indicated by us in the order shall also be deemed a material defect.  
In particular we are entitled to demand at our discretion rectification of defects or delivery of goods free of defects within a reasonable period to be determined by us; the supplier is liable in full for any costs this involves.  
We are, moreover, entitled to the statutory damage compensation claims.
- (2) The statutory limitation periods shall apply.
- (3) In the event the defect cannot be detected until the goods are handled or processed or put into use, we are also entitled to claim compensation for the work carried out in vain.
- (4) The supplier warrants that his deliveries meet the occupational health and safety requirements and the statutory accident prevention regulations (particularly those of the chemical industry), that in particular the required appropriate protective facilities and the relevant DIN safety data sheets or comparable safety instructions are supplied with the delivery, even if individual parts required for smooth operation are not listed separately in the order.  
In addition the supplier undertakes to carry out the delivery in compliance with the regulations of the respectively competent Institute of Statutory Accident Insurance and Prevention.  
The supplier is liable in accordance with the statutory regulations for the breach of this and other obligations.
- (5) The return of defective goods is effected at the expense and risk of the supplier.

#### **§ 7 Liability for material defects in the case of contracts for work and services**

- (1) The contractor is liable in full for any defects in contractual work and services performed.  
We shall be entitled to the statutory right of self-performance pursuant to § 637 BGB.
- (2) The statutory limitation periods shall apply.
- (3) § 6 shall apply accordingly for contracts of work and materials pertaining to moveable goods.
- (4) In particular our behavioural guidelines for external companies, which will be forwarded on request, must be complied with during the performance of contractual work and services. The same shall apply to compliance with technical regulations and observance of our technical delivery conditions in their currently applicable version; in addition § 6 (4) of these general terms and conditions of purchase shall apply accordingly.
- (5) Cost estimates will not be remunerated.

#### **§ 8 Retention of title – non-disclosure**

- (1) We shall expressly retain the title to any parts provided by us to the supplier.
- (2) Said retention of title shall also extend to the full value of those products which are created by processing or modification of our goods, with these actions performed for us so that we are considered the manufacturer. In the event the title of third parties remains in existence during the processing or modification with their goods, we shall acquire co-ownership proportional to the objective value of these goods.  
In the event of mixing or combination of our goods with other objects, we shall also acquire co-ownership at the above described proportion. If the process occurs in such a manner that the product of the supplier is to be considered as the principal item, it shall be agreed that the supplier assigns to us a proportional co-ownership.

The manufacturer shall safeguard our property with the due care customary in the industry and shall mark such as our property.

- (3) In as far as the estimated value of our security rights exceeds the value of the secured claims by more than 50 %, the excess security rights will become free. We shall decide their selection.
- (4) The supplier is obliged to maintain strict confidentiality concerning this order, all illustrations, drawings, calculations and other documents and information and knowledge of operations. These may only be disclosed to third parties upon our express approval. This obligation of confidentiality shall apply even after the settlement of this contract. However, it shall expire if and insofar the manufacturing know-how incorporated in the illustrations, drawings, calculations and other documents provided has become public domain or the supplier verifiably already had knowledge of such at the time of the communication pursuant to sentence 1.

#### **§ 9 Recourse**

- (1) If, due to a defect of the goods delivered by the supplier, claims are lodged against us under manufacturer's liability, product liability or on the basis of other liabilities, the supplier shall release us from the liability resulting from the defect, in as far as the supplier is responsible for the defect and is personally liable for such vis-à-vis third parties. In this case release shall be provided on first request.
- (2) In this context the supplier shall also be obliged to reimburse any expenditures which result due to or in connection with a recall action, according to §§ 683, 670 BGB or, respectively, §§ 830, 840, 426 BGB. Within the scope of reasonableness and possibility, we shall advise the supplier in good time in advance of the contents and extent of the action, thus allowing the supplier an opportunity to comment on such. This shall in no way affect any more extensive legal claims.
- (3) If, due to a defect of the goods delivered by the supplier, claims are lodged otherwise against us, we shall be entitled to the full extent of the recourse claim against the supplier under § 478 BGB; the only exception shall be if we have previously been awarded an equivalent compensation for the recourse.
- (4) The supplier is obliged to maintain a corresponding general liability policy with a flat rate coverage to the amount of at least € 10 million per bodily injury/property damage for the duration of this contract, i.e. until such time as the respective period of limitation for defects has expired. This shall in no way affect any more extensive claims for damages to which we may be entitled.

#### **§ 10 Patents and industrial property rights**

- (1) The supplier warrants that no rights of third parties worldwide will be infringed in the context of his deliveries.
- (2) Should third parties lodge claims against us in this respect, the supplier shall be obliged to release us from these claims. The release shall be provided on first request. In the event of claims for damages lodged by the third party, the right of the supplier is reserved to prove that he is not responsible for the infringement of the rights of said third party. Without the approval of the supplier we are not entitled to make any agreements (in particular settlements) with the third party.
- (3) This supplier's release obligation shall also apply for all expenses we incur by necessity from or in connection with the claim lodged by a third party.
- (4) The limitation period for these claims is three years and begins with the passing of risk.
- (5) Design drawings and similar company documents shall remain our property and shall always be treated strictly confidentially. They may not be copied and made accessible to third parties without our approval. Even extracts and the making of individual parts for the account of a third party is not permissible. In case of an infringement of these obligations, the supplier shall be liable to us to the full extent, in accordance with the statutory regulations.

#### **§ 11 Joint and several liability and unforeseeable events**

- (1) Claims of the supplier irrespective of the legal cause (in particular claims arising from fault in conclusion of a contract, violation of primary and secondary contractual obligations, reimbursement of expenses, unlawful acts and other tortious liability) are excluded.

We shall be liable in accordance with the statutory regulations in the event we or our vicarious agents or legal representatives violate our obligations wilfully or with gross negligence; legal regulations shall also apply should we culpably violate a cardinal contractual obligation (a cardinal contractual obligation applies if the violation of the obligation refers to an obligation in whose fulfilment the contractual partner has trusted and could be expected to trust).

In as far as we are not burdened with wilful intent, our liability in the above-mentioned cases is limited to typical contractual foreseeable damage.

We shall also be liable in accordance with the statutory regulations if we are charged with liability for injury to life, limb or health. The same shall apply in the case of the assumption of a warranty or assurance of a characteristic if a defect covered thereby gives rise to our liability. This shall also apply to mandatory liability in accordance with product liability law.

The above shall apply analogously for the reimbursement of expenses. No reversal of the burden of proof is intended.

#### **§ 12 Place of performance, place of jurisdiction, applicable law, distribution of burden of proof and data protection**

- (1) The place of performance for our obligations is our recipient plant. Unless indicated to the contrary in our order confirmation, the place of fulfilment is our place of business.
- (2) In as far as the supplier is a merchant, the place of jurisdiction for all claims shall be our place of business in Schwandorf. Other permissible general or special places of jurisdiction shall also be open to us.
- (3) With regard to all claims and rights deriving from this contract the non-harmonised law of the Federal Republic of Germany shall apply (BGB, HGB – German Civil Code, German Commercial Code). Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- (4) The statutory or case law distribution of the burden of proof shall not be changed by any provisions agreed in these terms and conditions.
- (5) Personal data that become known in the course of the business relationship or in connection with it shall be treated in accordance with the regulations of the German Data Protection Act.

#### **§ 13 Other provisions**

Any changes to the contract can only become effective if agreed with us.

Nabaltec AG