



NTN Wälzlager (Europa) GmbH

GENERAL CONDITIONS OF SALE AND SERVICES

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I. SCOPE – ORDERS – FORMATION OF THE CONTRACT

- (1) These general conditions of sale and services (“GCS”) apply to all business relationships of NTN Wälzlager (Europa) GmbH (NTN) with its customers. The GCS shall only apply if the customer is an entrepreneur (§ 14 BGB - German Civil Code), a legal entity under public law or a special fund under public law.
- (2) Any order implies strict adherence by the customer to these GCS, which shall prevail notwithstanding anything inconsistent therewith or contrary thereto in customer's order, customer's general purchasing conditions or any other document issued by customer unless otherwise previously agreed by NTN of which the customer has been notified in writing.
- (3) In particular, the customer's general terms and conditions of business shall not be recognised even if NTN does not expressly contradict them again after receipt or if NTN carries out the delivery to the customer without reservation in knowledge of the customer's terms and conditions.
- (4) Individual agreements made in individual cases with the customer (including ancillary agreements, supplements and amendments) shall always take precedence over these GCS. The content of such agreements shall be governed by a written contract or NTN's written confirmation.
- (5) References to the validity of legal regulations have only clarifying meaning. Therefore, even without such clarification, the statutory provisions shall apply to the extent that they are not directly amended or expressly excluded in these GCS.
- (6) NTN's offers are subject to confirmation and non-binding.
- (7) The order of the products or services by the customer is considered to be a binding contract offer. Unless otherwise stated in the order, NTN is entitled to accept this contractual offer within 4 weeks after its receipt by NTN.
- (8) Acceptance shall be effected either by written declaration (e. g. order confirmation) or by delivering the products to the customer. Verbal agreements, promises, assurances and guarantees of NTN's employees in connection with a conclusion of the contract shall only apply with the content of NTN's written confirmation.
- (9) Descriptions in catalogues, price lists and publicity brochures only present the general nature of the products and services described. NTN reserves the right to modify the products and services without prior notice.

II. DELIVERY DATES

- (1) Unless specifically agreed upon in writing by the parties, delivery dates quoted on order acknowledgements are given as an indication only and are in no way a firm commitment on the part of NTN to deliver by a certain date.
- (2) Consequently, no recourse may be brought against NTN due to late delivery and no order may be cancelled due to the same. Late delivery may neither allow to claim damages against NTN due to disputes arising between the customer and its own customers.
- (3) Without prejudice to its rights arising from the default of the contracting authority, NTN may demand from the customer an extension of delivery and performance periods or a postponement of delivery and performance dates by the period during which the customer fails to fulfil its contractual obligations towards NTN.
- (4) If NTN is unable to comply with binding delivery periods for reasons for which NTN is not responsible (“non-availability of service”, as defined in paragraph (5) below), NTN shall inform the customer thereof without delay and at the same time notify the prospective new delivery period. If the service is not available within the new delivery period, NTN is entitled to withdraw from the contract in whole or in part. In the event of withdrawal in accordance with paragraph (2) above, NTN will reimburse any consideration already provided by the customer without delay.

- (5) It shall be deemed to be non-availability of the service in this sense, a force majeure event, in particular but not limited to: natural disasters, storms, floods, frost, fires, supply difficulties, strikes or other labour conflict, communication or traffic channels dysfunction or interruption, regulations of government authorities prohibiting the convertibility or transfer of foreign currencies, the import, export or sale of the products or any delay in connection with cargo security requirements or with obtaining the necessary administrative authorizations in due time. Furthermore, it is in particular a case of non-availability of the service if NTN supplier fails to deliver to it in a timely manner, if NTN has concluded a congruent hedging transaction, if neither NTN nor its suppliers are at fault or if NTN is not obliged to procure the service in an individual case.
- (6) The occurrence of NTN's delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required. The customer's rights pursuant to Section VII and NTN's statutory rights shall remain unaffected.

III. DISPATCH OF PRODUCTS – TRANSFER OF RISK – QUANTITIES DELIVERED

- (1) The products are sold from NTN selected sites, loaded into the means of transportation made available by the customer pursuant to Incoterm "FCA Seller's premises" (as this term is defined in the Incoterms 2010). Consequently, the delivery is deemed to be effective, the transfer of risks to the customer occurs when the products (cleared for export) are loaded into the means of transportation made available by the customer and the place of performance is at the respective selected NTN site.
- (2) It is therefore the responsibility of the customer or recipient to take any action against the transporters and the insurers from the moment they receive the products under the above conditions. No exception may be made to this rule, unless expressly agreed upon in writing by NTN and the customer.
- (3) Insofar as acceptance has been agreed, this is decisive for the passing of risk. In all other respects, the statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. It is equivalent to handover or acceptance if the customer is in default of acceptance.
- (4) If the customer is in default of acceptance, if he fails to cooperate or if NTN's delivery is delayed for other reasons for which the customer is responsible, NTN is entitled to demand compensation for the resulting damage, including additional expenses (e. g. storage costs).
- (5) NTN shall only be entitled to make partial deliveries if
 - the partial delivery can be used by the customer within the scope of the contractual purpose,
 - the delivery of the remaining ordered products is guaranteed and
 - the customer does not incur any significant additional expenditure or additional costs as a result of this (unless NTN agrees to bear these costs).
- (6) For products or parts of products which were custom-made, the quantities delivered may be 10% more or less than the quantities ordered.

IV. PRICES

- (1) Except when specifically agreed by NTN and the customer in writing, for instance through the agreed Incoterm, prices exclude all types of expenses and costs, such as specific packaging costs, transport and insurance costs, customs duties, taxes and fiscal and fiscal-related charges, in particular V.A.T.
- (2) Unless otherwise stipulated, the prices in NTN proposals are firm. However, unless specifically agreed by NTN in writing, these prices may be reviewed due to economic and monetary fluctuations occurring between the placing of the order and its dispatch, leading to variations in the elements which determine such prices.
- (3) The prices quoted and acknowledged by NTN in quotations and order confirmations are valid for the quantity ordered, and should the quantity be altered, NTN reserves the right to modify the unit prices accordingly. Unless otherwise agreed, the quotations are valid for a one-month period as of their offering.

V. CONDITIONS OF PAYMENT - DELAY IN PAYMENT OR DEFAULT

- (1) Except when otherwise stipulated in acknowledgment of receipt or invoices of NTN, all invoices are payable net without discount to NTN within 30 days after date of invoice.
- (2) Upon expiry of the aforementioned payment period, the customer shall be in default. The purchase price shall bear interest during the period of delay at eight percentage points above the basic rate of interest or at the applicable

statutory default interest rate if this latter is higher. NTN reserves the right to assert further damages for delay. NTN's entitlement to the commercial maturity interest (§ 353 HGB - German Commercial Code) remains unaffected.

- (3) Any complaints concerning a supply do not entitle the customer to withhold any payment when due. The customer shall only be entitled to set-off or retention rights to the extent that his claim is legally established or uncontested. In addition, his right to withhold payments shall only exist insofar as his counterclaim is based on the same contractual relationship. In case of defects in the delivery, the customer's counter rights remain unaffected.
- (4) If it becomes apparent after conclusion of the contract (e. g. by filing for insolvency proceedings) that NTN's claim to the purchase price is endangered by the customer's lack of ability to pay, NTN shall be entitled to withdraw from the contract in accordance with the statutory provisions on refusal to perform and - if applicable, after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), NTN can declare its withdrawal immediately; the statutory provisions governing the dispensability of setting a deadline remain unaffected.

VI. PROPERTY RESERVE CLAUSE

- (1) NTN reserves the property of products delivered to its customers until effective payment of their whole price in principal and accessories.
- (2) The products subject to retention of title may not be pledged to third parties before full payment of the secured claims has been made, nor may they be assigned as security. The customer must inform NTN immediately in writing if an application for the opening of insolvency proceedings is filed or if third-parties seize the products belonging to NTN (e. g. seizures).
- (3) As long as the products are not fully paid by the customer, the customer is obliged to treat the products with care, in particular he is obliged to insure them sufficiently at his own expense against fire, water and theft at replacement value. Insofar as maintenance and inspection work is necessary, the customer must carry out such work in good time at his own expense.
- (4) In the event of breach of contract by the customer, in particular in the event of non-payment of the due purchase price, NTN shall be entitled to take back the products provisionally after NTN has previously set a reasonable deadline for payment to the customer without success or such a deadline is unnecessary in accordance with the statutory provisions. The taking back of the products is not a withdrawal from the contract. The right to withdraw from the contract, to reclaim and use the item remains unaffected.
- (5) Until revoked in accordance with (c) below, the customer is entitled to resell and/or process the products subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:
 - a) The retention of title extends to the products resulting from the processing, mixing or combination of NTN's products at their full value, whereby NTN is regarded as manufacturer. If the right of ownership remains with a processing, mixing or combination with products of third parties, NTN shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined products. Otherwise, the same shall apply to the resulting product as to the products delivered under retention of title.
 - b) The claims against third-parties arising from the resale of the products or the product are hereby assigned to NTN by the customer as security in their entirety or to the amount of NTN's possible co-ownership share in accordance with the preceding paragraph. NTN accepts the assignment. The obligations of the customer mentioned in Section VI. (2) also apply in consideration of the assigned claims. The customer also assigns to NTN the claims to secure NTN's claim against him, which accrue against a third-party due to the combination of the products with a real property.
 - c) The customer remains authorised to collect the claim in addition to NTN. NTN undertakes not to collect the claim for as long as the customer does meet his payment obligations, does not fall into arrears, is not in default of payment, has not filed for insolvency proceedings and there is no other deficiency in its performance. If this is the case, however, NTN can demand that the customer informs NTN of the assigned claims and their debtors, provides NTN with all information necessary for collection, hands over the associated documents and informs the debtors (third-parties) of the assignment.
 - d) If the realisable value of the securities exceeds NTN's claims by more than 10%, NTN will release securities of its choice at the customer's request.
- (6) In case of export sale, the customer will have to, if necessary, carry out at his expenses, any formality which would be required, in the country of the products' delivery, for the enforcement of the present property reserve clause.

VII. LIABILITY FOR DEFECTS

- (1) The statutory provisions shall apply to the rights of the customer in the event of material and legal defects (including wrong and short delivery as well as improper assembly or faulty assembly instructions) unless otherwise stipulated below. In all cases, the statutory special provisions in case of final delivery of the products to a consumer (supplier's recourse according to §§ 478,479 BGB) remain unaffected.
- (2) The products are in accordance with the contract if they do not deviate from the agreed specification at the time of transfer of risk. The content and scope of the agreed specification shall be determined by the information in NTN's written confirmation. Liability for a specific purpose or suitability shall only be assumed to the extent that this has been expressly agreed. In all other respects, the risk of suitability and use shall be borne exclusively by the customer. Contents of the agreed specification or any expressly agreed purpose of use do not constitute a guarantee. If a guarantee has been expressly agreed, NTN's written confirmation is decisive for the content of the guarantee declaration.
- (3) Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory provisions whether a defect exists or not. NTN assumes no liability for public statements of the manufacturer or other third parties (e. g. advertising statements).
- (4) The customer's claims for defects presuppose that he has complied with his statutory obligations to inspect the products and give notice of defects (§§ 377, 381 HGB). If a defect becomes apparent during delivery, inspection or at any time thereafter, NTN must be notified immediately in writing. In any case, obvious defects must be reported in writing within 8 working days from delivery. If the customer fails to properly inspect the products and/or notify NTN of defects, NTN's liability for the undisclosed defect shall be excluded.
- (5) If the products have been accepted by the customer, subsequent notification of material defects which could have been ascertained at the agreed type of acceptance shall be excluded.
- (6) If the delivered item is defective, NTN may first choose whether NTN performs supplementary performance by rectifying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). NTN's right to refuse supplementary performance under the statutory conditions remains unaffected. Supplementary performance does not include the removal of the defective item or its re-installation if NTN was not originally obliged to do so.
- (7) NTN shall be entitled to make the supplementary performance owed dependent on the customer paying the purchase price due. However, the customer is entitled to retain a proportion of the purchase price commensurate with the defect.
- (8) The customer must give NTN the time and opportunity to perform the supplementary performance owed by NTN, in particular to hand over the rejected products for inspection purposes. In the event of a replacement delivery, the customer shall return the defective item to NTN in accordance with the statutory provisions. If the customer does not give NTN the opportunity to inspect the products, and in particular if he does not make the rejected products or samples thereof available immediately upon request, all claims for defects shall lapse.
- (9) Claims for defects shall also lapse in the event of non-compliance with the installation, fitting and operation regulations valid at the time of installation of the delivery item by the customer.
- (10) NTN shall bear the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs (not: dismantling and installation costs), if there is actually a defect. If, however, a request for remedy of defects by the customer turns out to be unjustified, NTN may demand reimbursement of the costs incurred by the customer, unless the lack of defectiveness was not evident to the customer.
- (11) In urgent cases, e. g. in case of endangering the operational safety or to prevent disproportionate damage, the customer has the right to remedy the defect himself and to demand compensation from NTN for the objectively necessary expenses. NTN is to be informed immediately, if possible in advance, of such a self-execution. The right to remedy the defect himself does not exist if NTN would be entitled to refuse supplementary performance in accordance with the statutory provisions.
- (12) If the supplementary performance has failed or if a reasonable period of grace to be set by the customer for supplementary performance has expired without success or is not required by law, the customer can withdraw from the contract or reduce the purchase price proportionally. However, in the case of an insignificant defect, there is no right to withdraw from the contract.
- (13) Claims of the customer for compensation for damages or reimbursement of futile expenses, even in case of defects, only exist in accordance with Section 8 and are excluded in all other respects.

VIII. LIMITATION OF LIABILITY AND STATUTE OF LIMITATION

- (1) Insofar as nothing else arises from these GCS, including the following provisions, NTN shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) NTN shall be liable for damages - irrespective of the legal basis - within the scope of liability for wilful misconduct and gross negligence. In the case of simple negligence, NTN shall only be liable, subject to a milder level of liability in accordance with statutory provisions (e.g. duty of care in NTN's own affairs), for the following reasons only
 - a) for damages resulting from injury to life, body or health,
 - b) for damages resulting from the not inconsiderable violation of an essential contractual obligation (obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on whose observance the contractual partner regularly relies and may trust); in this case, however, the liability of NTN is limited to the compensation of the foreseeable, typically occurring damage.
- (3) The above exclusions and limitations of liability shall apply to the same extent for the benefit of the organs, legal representatives, employees and other vicarious agents of the Seller. They do not apply if NTN has fraudulently concealed a defect or if NTN has given a guarantee for the quality of the products and for claims of the customer according to the product liability law.
- (4) Unless otherwise provided for above, NTN's liability - irrespective of the legal nature of the asserted claim - is excluded. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for damage to property in accordance with § 823 BGB.
- (5) Due to a breach of duty that does not consist of a defect, the customer can only withdraw from the contract or terminate the contract if NTN is responsible for the breach of duty. A free right of termination of the customer (in particular according to §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- (6) Contrary to § 438 Paragraph 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. Insofar as acceptance has been agreed, the limitation period begins with acceptance.
- (7) The foregoing limitation periods shall also apply to contractual and non-contractual claims for damages by the customer based on a defect of the products, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages of the customer pursuant to Section 8 para. 2 sentence 1 and sentence 2 (a) as well as under the Product Liability Act are subject to the statute of limitations in accordance with the statutory limitation periods only.
- (8) Repairs and replacement deliveries do not allow the period of limitation to restart.

IX. INTELLECTUAL PROPERTY - CONFIDENTIALITY

- (1) NTN remains the owner of the intellectual property of the projects, studies, drawings, models and objects it carries out or which are carried out on its behalf. They cannot be disclosed or used without its prior written agreement.
- (2) The customer shall keep confidential the written or oral information of NTN which are disclosed directly or indirectly, even after the termination of their contractual relationship.
- (3) Upon request, the customer must return these items to NTN in full and destroy any copies that may have been made.

X. TOOLS, MOULDS, SPECIFIC EQUIPMENTS, PROTOTYPES

- (1) Contribution to the costs of making the tooling (tools, moulds, etc.) which could be asked to the customer does not imply any transfer to its benefits of the physical property of such tooling nor of any intellectual property rights thereon, unless otherwise agreed in writing.
- (2) Prototypes are non-binding prototypes. Minor deviations from this rule do not entitle to complaints.

XI. LEGAL DISPUTES

- (1) NTN and the customer shall seek to amicably settle their dispute by a meeting of the respective directors of NTN and the customer.

- (2) In case of failure to find an amicable settlement, any dispute arising from the interpretation of or action according to these general conditions of sale and services, and/or any order, even in the case of incidental request or involving several parties, shall be governed by and construed in accordance with the German law.
- (3) The previous provisions are applicable to the international sales. When the contract contains an element of foreign origin, the United Nations Convention on Contract for the International Sale of Goods of 1980 (Wien) will also apply.
- (4) If the customer is a merchant in accordance with the German Commercial Code (*Handelsgesetzbuch*), a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is NTN's place of business. The same applies if the customer is an entrepreneur in accordance with § 14 BGB (German Civil Code). In all cases, however, NTN shall also be entitled to institute legal proceedings at the place of performance of the delivery obligation in accordance with these GCS or a priority individual agreement or at the customer's general place of jurisdiction. Priority statutory provisions, in particular with regard to exclusive responsibilities, shall remain unaffected.

XII. DIVISIBILITY

If any provision of the present general conditions is or becomes invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the enforceability of the remaining provisions of the present general conditions which will stay completely in force.