

General Terms and Conditions for Sales and Delivery for Use in Business Transactions with Non-consumers

1. Validity

1.1 These terms of delivery and payment apply to all contracts, deliveries and other services including consulting services which are not the subject matter of a separate consulting contract of Norafin Industries (Germany) GmbH ("supplier") in business transactions with persons ("buyers"), who are not users pursuant to §13 BGB (German Civil Code).

2. Offer and conclusion of contract

2.1 The offers contained in the catalogues and sales documentation of the supplier, provided they are not explicitly marked as binding, are always subject to confirmation, i.e. are only to be seen as a request to submit an offer and do not oblige the supplier to conclude a contract.

The supply contract comes into effect,

- with a written acceptance/order confirmation from the supplier, whereby the buyer waives the receipt of this declaration of acceptance/order confirmation, or
- if the supplier executes the order as soon as the order is received, or on-time, whereby in this case the invoice counts as the order confirmation,
- if an offer is submitted by the supplier based on a non-binding request of the buyer and is accepted by the buyer in the form of a subsequent written declaration.
- if a buyer with whom the supplier is in a long-term business relationship and with whom a frame-work agreement has been concluded about the intended purchase of a supplied quantity, orders a supplied quantity.

2.2 The customer is obliged to guarantee the accuracy of the conditions of each order placed by the customer (including each applicable specification) and to provide the supplier with all necessary information with regard to the goods within a sufficient time period, in order to give the supplier the opportunity to meet the corresponding conditions.

2.3 Any objections concerning the content of a modifying contract confirmation must be sent to the supplier in writing within 3 working days. Otherwise the contract shall be considered to be concluded on the conditions in the supplier's confirmation insofar as changes are not substantial.

2.4 Details provided by the seller relating to the subject matter of the delivery or service (such as weights, dimensions, usage values, load capacities, tolerances and technical specifications) and our representations of the same (e.g., drawings and illustrations) are deemed to be only approximate unless the use for a particular purpose is contractually agreed. These are not guaranteed features but merely descriptions or markings of the delivery or service. Customary material and quantity deviations resulting from legal provisions or technical improvements and the replacement of components by other parts of equivalent quality are permissible provided they do not impair the applicability of the product for the contractually agreed purpose.

2.5 The standard tolerances of the supplier, as the buyer has been informed of and is aware of, are applied to measurements and are decisive if no other tolerances have been contractually agreed upon.

3. Prices

The prices of the supplier are quoted without VAT, customs duties, fees, freight costs and any taxes and costs, which the buyer additionally incurs provided the contractual parties have not agreed anything else in individual cases. The supplier reserves the right to make price increases 4 months after the conclusion of the contract, if the production and raw material costs increase considerably after the order confirmation has been submitted, and this is not the fault of the supplier.

4. Terms of Payment

4.1 The purchase price is due immediately upon receipt of the goods without discount. Other payment conditions can be agreed between the supplier and buyer.

4.2 In case of a default of payment by the buyer, the supplier is authorised to demand the full purchase price immediately.

4.3 The buyer only has a right of retention if it is based on the same contractual relationship with the supplier. This does not apply to uncontested or legally established claims of the buyer.

4.4 In case of a default of payment the legal provisions apply, whereby the supplier shall charge interest on the default amounting to 9 percentage points above the respective basic rate of interest. Any discounts agreed are not granted if the buyer is in default with the payment of previous services. If payments are deferred, interest is charged at 9 percentage points above the respective basic rate of interest for the period of the deferral.

4.5 Payments by bill of exchange are only permitted upon separate agreement. Bills of exchange and cheques are only accepted in lieu of payment and not as a payment. Costs of discounting and collection are to be borne by the buyer. In case of a protest of a cheque or bill of payment the supplier can demand immediate payment in cash concurrently in exchange for the return of the cheque or bill of exchange.

4.6 The buyer can only offset uncontested or legally established claims. Any other offset by the buyer is excluded.

5. Delivery, transfer of risk and delays

5.1 The risk shall pass to the buyer once the purchase item has been handed over to the carrier or forwarding agent and at the latest upon departure from the plant or warehouse.

5.2 The supplier has the right to make partial deliveries of a suitable size. If, however, the buyer demands partial deliveries, then it has to bear the additional expenses for customs, fees, freight costs and other taxes and costs.

5.3 The delivery term is extended – even during a delay appropriately if force majeure events occur and in case of any unforeseen obstacles, which arise after the conclusion of the contract, and are not caused by the supplier (in particular this also covers breakdowns, strikes, lock-outs or disruptions to the transport routes), provided it is evident that these obstacles have a considerable effect on the delivery of the sold object. This also applies if these circumstances are incurred by the suppliers of the supplier and their sub-contractors. The supplier shall inform the buyer of the start and end of impediments of this kind as soon as possible. The buyer can demand a declaration from the supplier, about whether it intends to withdraw from the contract or deliver within a suitable period. If the supplier does not make this declaration immediately, then the buyer is permitted to withdraw from the contract.

5.4 If the supplier fails to deliver or delivers late, then it is not liable for compensation in addition to the service as per §280, paragraph 1 BGB or §280, paragraph 2 BGB in connection with §286 BGB. Claims for compensation instead of service as per §§280, paragraph 3, 281 – 283 BGB and the right of withdrawal from the contract as per §§323 et seqq. BGB remain unaffected by this. This disclaimer of liability does not apply to damages from an injury to life, limb or health, which are caused by a grossly negligent or malicious breach of duty by the supplier or a grossly negligent or malicious breach of duty by a legal representative or vicarious agent of the supplier. Furthermore, this liability disclaimer also does not apply if damages are due to a grossly negligent or malicious breach of duty by the supplier or a grossly negligent or malicious breach of duty by its legal representatives or vicarious agents. The buyer is only authorised to withdraw from the contract if the breach of duty permitting the withdrawal is caused by the supplier, its vicarious agents or legal representatives. In any other cases, withdrawal is not permitted.

6. Liability for material defects and defects of title

6.1 A material defect is present if the item does meet the agreed condition when the risk is transferred. If a condition has not been agreed then the item is deemed free of material defects if it is suitable for application in accordance with its intended use or if it is suitable for normal use and has a condition which is standard for similar items and which the buyer can expect for this type of item.

6.2 The item is deemed to be free of defects of title if third parties cannot assert claims, or only the contractually-assumed rights, against the buyer with regard to the item.

6.3 The supplier and the buyer shall stipulate the characteristics explicitly in a separate contract. If a specification of a condition is made by the supplier this does not provide a guarantee of the presence of or lack of a characteristic. To this extent only bargaining agents are authorised. Agreements made by other persons are not binding for the supplier.

6.4 In the event of an entitled, timely notification of defects, the supplier can either remedy the defect or deliver a non-defective product (supplementary performance). If the supplier fails or refuses to remedy the defect, the buyer shall be entitled to reduce the purchase price or rescind the contract after the stipulation and futile expiration of a reasonable period. In cases where the defect is only minor or where the goods have already been processed or transformed, he may only reduce the purchase price. Expenditures in connection with the supplementary performance are taken over by the supplier only if they are proportionate to the purchase price of the goods, however, in no case, more than 150 % of the purchase price. Expressly excluded are the costs of installing and removing the defective product. The supplier will not reimburse the buyer for any expenditure in connection with the redelivery of the goods to any other place than the agreed place of performance, unless such redelivery corresponds to the contractual use of the goods.

6.5 If this contract is a trading deal for both parties, then the buyer must examine the goods as per §377 HGB (German Commercial Code) straight after the delivery by the supplier, provided this is possible according to the normal course of business, and if defects are detected to notify the supplier immediately. Recognisable transport damage is also to be reported immediately, at the latest within 48 hours. If the buyer neglects to inform the supplier, then the goods are deemed to be approved, unless there is a defect which could not be detected in the examination. If a defect of this sort appears later, then the notification to the supplier must be made as soon as the defect is detected. In all other cases the goods are deemed to be approved, even in view of the defect. The timely sending of notification is sufficient in order to retain the buyer's rights. If the supplier intentionally does not disclose the defect, then it cannot invoke this paragraph (paragraph 6.5).

6.6 The limitation period for the liability for material defects and defects of title amounts to one year after the delivery of the newly produced item, provided that the legal provisions as per §438 paragraph 1, no. 2 BGB (Buildings and Items for Buildings) or §479, paragraph 1 BGB (Withdrawal Claim) do not specify longer terms. The withdrawal from or reduction of contract is invalid if the claim on the service or according to the claim for performance has expired and the supplier invokes this. This shall have no effect on the supplier's liability from wilful and grossly negligent breaches of duty, damages to life, to the body and to health caused by our negligence or to the limitation period for claims of recourse.

6.7 In addition, any further liability to compensation, in particular liability without fault, is excluded. The liability limitation does not apply to damages which are due to a grossly negligent or malicious breach of duty by a legal representative or vicarious agent of the supplier. Furthermore, the liability limitation does not apply to damages from injury to life, body or health. Liability is also not limited in the case of damages which are due to severe organisational errors of the supplier, as well as damages which have been caused by the lack of a guaranteed condition. In addition, the supplier is liable, in case of violations to essential contractual obligations, up to the amount of the foreseeable damage, which is typical for the contract, provided a liability limitation has not already been ruled out in accordance with the regulations of this paragraph.

6.8 Liability as per the Product Liability Law remains unaffected.

6.9 If damage is the fault of both the supplier and the buyer, then the buyer has to take its contributory negligence into account.

7. Retention of title

7.1 The supplier retains the ownership of the purchased items until the receipt of all payments from this purchase contract.

7.2 The processing and transformation always occur for the supplier as manufacturer, although without any obligation for it. If the supplier's co-ownership is cancelled through union (consolidation), then it is agreed here that the buyer's co-ownership in a uniform item passes over to the supplier in proportion to the value (invoice value). The buyer shall preserve the supplier's co-ownership without charge.

7.3 Goods which the supplier is entitled to co-ownership of are hereinafter called retained goods.

7.4 The buyer is authorised to process and sell the retained goods in the normal course of business, provided it is not in default. Pledges or assignments as security are not permitted.

7.5 Claims which arise from the re-sale or any other legal basis (insurance, unlawful handling) with regard to the retained goods, shall here, for safety, be assigned in full by the buyer to the supplier. The supplier shall revocably empower the buyer to collect the claims assigned to it for their account in their own name. The authorisation to collect can be revoked if the buyer cannot properly meet its payment obligations. The buyer can demand the release of securities, if their realisable value exceeds 20% of the claim to be secured.

7.6 The supplier is authorised to insure the subject matter of the delivery at the expense of the buyer against fire, water and other damage, provided the buyer has not verifiably concluded insurance for the items, which the buyer has to notify the supplier of.

7.7 Pledges or assignments as security are not permitted. The buyer is obliged to protect the subject matter of the contract from third parties. It shall refer third parties to the fact that the items are the property of the supplier. The buyer shall inform the supplier immediately in case of access by third parties, in particular by compulsory enforcement actions.

7.8 The assertion of the retention of title, the pledge of the subject matter of the delivery and the attachment of the subject matter of the delivery by the supplier do not count as a withdrawal from the contract, unless the regulations regarding instalment business as per §503, paragraph 2, line 4 BGB apply. In this case the attachment of the delivered goods by the supplier counts as the exertion of the right to withdraw from the contract, unless the supplier agrees upon a reimbursement with the buyer for the customary sales value of the item at the time of its attachment.

7.9 If the effectiveness of this retention of title is linked to special pre-requirements or formal requirements of other legal systems in force at the headquarters of the buyer, outside of the territory of the Federal Republic of Germany, the buyer is obliged to ensure that it complies with these at its own cost. In all other cases the buyer is obliged to provide compensation.

8. Orderer's right of cancellation as per §649 BGB

If this is a contract for work and materials regarding a non-substitutable item, which means that §649 BGB also applies in addition to the purchase law regulations as per §651 BGB, then the right of cancellation as per §649 BGB is ruled out.

9. Defence of uncertainty

9.1 If the supplier is obliged to provide an advance service, then it can refuse the service if it is clear after the conclusion of the contract that a claim for the payment of the purchase price is endangered due to the inability of the buyer to meet payments. This right to refuse services does not apply if the buyer makes a counter performance or provides security for it. The buyer is authorised to make payments in advance.

9.2 In case of an obligation to provide an advance service, the supplier can set a suitable deadline within which the buyer can make payment at its discretion concurrently with the counter service or has to provide security. If this deadline expires without success the supplier can withdraw from the contract. §323 BGB applies correspondingly.

10. Intellectual property

The rights of the supplier, in particular patents, samples, designs, brands and other commercial or intellectual property rights with regard to the development and production of the contractual goods and with regard to the company of the supplier are to be taken into account by the buyer. They are to be treated as confidential and are not allowed to be copied, reproduced or disclosed to third parties without the prior written agreement of the supplier.

11. Place of jurisdiction

For all disputes arising from this contractual relationship, provided the buyer is a registered trader in accordance with §1, et seqq. HGB, a public sector organisation or a special fund under public law, the place of jurisdiction is the functionally responsible court. The supplier retains the right to sue an independent subsidiary of the customer at its location.

12. Requirement of written form

12.1 Modifications and additions to this contract must be made in writing. This also applies to any agreement to reject the requirement of written form.

12.2 The General Terms and Conditions of the supplier apply exclusively to all contracts between the supplier and buyer.

13. Severability clause, applicability of German Law

13.1 If a condition of the contract or these General Terms and Conditions is or becomes invalid, this does not affect the validity of the rest of the contract. The invalid condition is to be replaced by a valid condition which comes as close as possible to the commercial purpose of the invalid condition.

13.2 The law of the Federal Republic of Germany shall apply exclusively to this contract. The UN Sales Convention (CISG) shall not apply.