

General Terms & Conditions (GTC) of Sale and Delivery of novoflow GmbH

§ 1 Scope

- (1) All deliveries, services and offers of the seller will be effected based exclusively on these General Terms of Supply. These shall form an integral part of all contracts the seller concludes with its contractual partners (hereinafter also referred to as 'buyer' or 'buyers') on the deliveries or services rendered by the seller. They shall also apply to all future deliveries, services and offers to the buyer even if not agreed upon again separately.
- (2) Trading conditions of the buyer or a third party shall not apply even where the seller does not separately object to their validity on an individual occasion. Even if the seller makes reference to a letter that contains trading conditions of the buyer or a third party or refers to such, this shall not constitute consent to the application of those trading conditions.

§ 2 Offer and Conclusion of Contract

- (1) Offers on the part of the seller shall be subject to confirmation and non-binding provided they are not explicitly marked as binding or contain specific terms of acceptance. The seller may confirm purchase orders or orders within fourteen days of receipt.
- (2) Only the contract of sale concluded in writing, including these General Terms of Delivery, shall be authoritative for the legal relations between the seller and the buyer. This contract fully incorporates all agreements between the contracting parties on the subject matter of the contract. Any oral promises made by the seller before the conclusion of this contract shall be legally non-binding and any oral agreements made by the parties shall be substituted by the written contract provided they do not individually explicitly stipulate that they will remain in force and be binding.
- (3) Any amendments and changes to the agreements concluded, including these General Terms of Delivery, shall be made in writing and signed by the parties in order to become effective. In order to be signed by the parties, it shall suffice to transmit any such document via means of telecommunication, particularly via fax or email, provided that the copy of the signed declaration is transmitted.
- (4) Unless explicitly agreed otherwise, any specifications of the seller concerning the object of the delivery or service (for instance weight, dimensions, serviceability, resilience, tolerances and technical specifications) as well as our representations of the object (for instance drawings and illustrations) shall merely be approximately authoritative. They shall not constitute guaranteed quality features but descriptions or labels of the delivery or service.
- (5) Unless explicitly agreed otherwise, any deviations and deviations made on the basis of existing legislation or qualifying as technical improvements as well as replacing components by equivalent parts shall be admissible.
- (6) The seller shall retain title or copyright in all offers and cost estimates made by the seller as well as in the drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the buyer. Without the seller's explicit consent, the buyer shall not make these objects as such or their content accessible to any third party, make them known or use or copy them by itself or through any third party. Upon the seller's request, the buyer must return all of these objects to the seller and destroy any copies that may have been made when the buyer no longer needs them in its ordinary course of business or when negotiations do not lead to the conclusion of a contract.

§ 3 Prices and Payment

- (1) All prices shall apply to the scope of services and deliveries stated in the order confirmations. In all other respects, any additional or extra services will be charged separately. All prices are in EURO ex works plus packaging, standard VAT, in the case of export deliveries customs duties as well as fees and other public charges (EXW).
- (2) Where the prices agreed are based on the seller's list prices and delivery is to be made only after more than four months from the conclusion of contract, the seller's list prices valid at the time of delivery shall apply.
- (3) The full or partial payment of invoices and amounts payable within thirty days without any deduction whatsoever. Receipt by the seller shall be authoritative for the date of payment. Payment by bill of exchange or cheques shall not be permissible unless expressly agreed otherwise. In this case, cheques shall be deemed payment only after their clearance. If the buyer does not perform by the due date, any outstanding amounts shall bear interest of 8% p. a. from the due date; this shall not affect the charging of higher interest rates and further damages in the case of delay.
- (4) Any down payments and advance payments shall be made plus statutory VAT, if applicable. The seller shall be liable in the amount of the statutory VAT if VAT is not invoiced in the case of de-facto domestic deliveries within the meaning of the German Law on Tax (Abgabenordnung) but not limited to collection without subsequently submitting the required proofs of export / intra-company shipment to the seller.
- (5) All banking and currency fees, charges and costs of payment transactions are to be borne by the buyer.
- (6) Offsetting against counter claims of the buyer or retention of payments for such claims shall be admissible only where counter claims are undisputed or declared final and binding.
- (7) All deliveries of Products agreed to by the seller shall at all times be subject to credit approval of the seller. If, in seller's judgment, buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, the seller may refuse to produce or deliver Products, including but not limited to collection without subsequently submitting the required proofs of export / intra-company shipment to the seller.
- (8) In the event of any default by buyer in the payment of any fees or charges due, or any other default by buyer, seller shall have the right to refuse performance and/or delivery of any Products until payments are brought current and seller may suspend, delay or cancel any credit, delivery or any other performance by seller without any liability towards the buyer. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

§ 4 Delivery and Time of Delivery

- (1) All deliveries are to be effected ex works (EXW).
- (2) Unless a specific time limit or date is promised or agreed, any deadlines and dates for deliveries and services shall be deemed to be approximate at all times. If shipment is agreed, any delivery time limits and dates shall refer to the date of handing over to the forwarding agent or carrier or other party commissioned with the transport.
- (3) The seller may – without prejudice to its rights from the buyer's delay – request from the buyer an extension of time limits for delivery or performance of services or the postponement of dates for deliveries and the performance of services by the period in which the buyer fails to comply with its contractual obligations vis-à-vis the seller.
- (4) The seller shall not be liable for delays in the delivery or delays in the performance to the extent that these are caused by force majeure events or other events which at the time of conclusion of the contract were not foreseeable (for instance interruptions of operations of all kinds, difficulties in the procurement of material or energy, delays in transport, strikes, legal lock-outs, lack of personnel, energy or raw material, difficulties in obtaining required permissions by authorities, governmental measures or non-supply or incorrect or untimely supply by suppliers) for which the seller is not responsible. The seller shall be entitled to withdraw from the contract if such events make it considerably more difficult or impossible for the seller to effect delivery or perform services and such impairment is not for a limited period of time. In the case of temporary impairments, the terms for delivery or the performance of services shall be subject to change and the seller's liability shall be postponed by the time of the impairment. The seller shall be reasonably expected to accept the delivery or performance of service as a consequence of the delay.
- (5) The seller shall be entitled to effect partial deliveries only if:
 - The buyer can use the partial delivery within the contractually agreed intended purpose;
 - Delivery of the remaining goods of the goods ordered is secured; and
 - This does not lead to substantial additional effort or expense for the buyer (unless the seller agrees to pay these costs).
- (6) If the seller is delayed or unable to perform a service, or if it is no longer possible for him to effect a delivery or perform a service for any reason whatsoever, the seller's liability for damages in accordance with section 8 of these General Terms of Delivery shall be limited.

§ 5 Place of Performance, Shipping, Packaging, Passing of Risk, Taking Delivery

- (1) Unless otherwise stipulated, the place of performance for all obligations under the contract shall be 86641 Rain / Lech., Germany. If the seller has also agreed to carry out installation, the place of performance shall be the place at which the installation must be made.
- (2) The shipping type and packaging and insurance are to be determined by the seller.
- (3) The risk shall pass to the buyer upon, at the latest, handing over of the ordered item (time of loading shall be authoritative) to the forwarding agent, carrier or other third party commissioned with effecting the shipment. This shall apply also in the case of partial deliveries or if the seller has also taken over other services (for instance shipping or installation). If shipping or handover is delayed following a circumstance whose cause lies on the side of the buyer, the risk shall pass to the buyer from the date on which the delivery item is ready for dispatch and the seller has notified the buyer of the readiness for dispatch.
- (4) The buyer shall bear the cost of storage after the passing of risk. In the case of storage by the seller, the storage costs shall amount to 0.25 % of the invoice amount of the ordered items to be stored for each commenced week. The claiming of and the proof of further or lower storage costs shall be the responsibility of the buyer.
- (5) Only at the request and for account of the buyer will the seller insure consignments against theft, breakage, conveyance, fire and water risks or other insurable risks.
- (6) If taking of delivery is to be effected, the goods shall be deemed to have been taken delivery of when:
 - Delivery and, if the seller has also agreed to carry out installation, installation have been completed;
 - The seller has notified the buyer thereof, with reference to the construed taking of delivery under this section 5 (6), and demanded that the buyer take delivery;
 - Since delivery or installation twelve business days have passed or the buyer has started to use the goods (for instance if the buyer has taken the facility delivered into operation) and in this case six business days have passed since delivery or installation; and
 - The buyer has failed to take delivery within this period for another reason than for a defect of which it has notified the seller and which makes it impossible to use the goods or considerably impairs their use.

§ 6 Statutory Warranty, Material Defects

- (1) Unless otherwise stipulated the warranty period shall be one year from delivery or, if taking of delivery is required, from the taking of delivery.
- (2) The items delivered are to be thoroughly checked immediately after their delivery to the buyer or the third party designated by the buyer. They will be deemed approved by the buyer with respect to any obvious defects or other defects that would have been apparent in an immediate thorough check unless the seller receives written notification of defects within seven business days of delivery. The ordered goods shall be deemed approved by the buyer with respect to other defects unless the seller receives notification of defects within seven business days from the time the defect becomes apparent. However, if the defect was already apparent to the buyer in normal use at an earlier time, this earlier point in time shall be authoritative for the commencement of the complaint period. Upon the seller's request, rejected goods are to be returned to the seller freight paid. In the case of a justified notification of defects, the seller will reimburse the cost of the cheapest way of shipping; this shall not apply if the cost increases because the ordered goods are in a different place from the place of their proper use.
- (3) In the case of material defects of the delivered items, the seller shall be obliged and entitled, first, to remedy the defect or defects or deliver substitutes, which choice the seller shall make within a reasonable period of time. If this fails, i.e. in the case of impossibility, intolerance, refusal or undue delay of remedying or substituting, the buyer may withdraw from the contract or reasonably reduce the purchase price.
- (4) If a defect is due to fault on the part of the seller, the buyer may claim damages in accordance with the prerequisites stipulated in section 8.
- (5) If there are defects in other manufacturers' materials which the seller cannot remedy for licensing or factual reasons, the seller will, by its choice, assert its warranty claims vis-à-vis the manufacturers and suppliers to the account of the buyer or assign them to the buyer. There will only exist warranty claims for such defects against the seller under the other prerequisites and in accordance with these General Terms of Delivery when judicial enforcement of the abovementioned claims against the manufacturer and suppliers has been fruitless or, for instance because of insolvency, judicial enforcement does not promise success. The limitation period for the respective warranty claims of the buyer against the seller shall be suspended for the duration of the litigation.
- (6) In the event that the seller has replaced the ordered item or has changed the ordered item by a third party such that any remedy will be impossible or unreasonably more difficult, the warranty will no longer apply. In any case, the buyer shall be obliged to bear the additional costs for remedying the defect or defects accrued through the changes.
- (7) No warranty whatsoever for material defects will be provided for the delivery of used items, as may be agreed with the buyer in particular cases.

§ 7 Property Rights

- (1) In accordance with this section 7, the seller shall be responsible for ensuring that the delivered item – as provided by the seller – is free from industrial property rights or copyright laws of any third party in Germany. Each contractual partner will notify the other contractual partner in writing without undue delay in the event that claims of the infringement of such rights are raised against it.
- (2) If the delivered item infringes an industrial property right or copyright law of a third party, the seller, by its choice and at its own expense, will change or substitute the delivered item in a way that the rights of third parties will no longer be infringed while the delivered item continues to comply with its contractually agreed function or, by concluding a license agreement, give the buyer the right of use. If the seller fails to do so within a reasonable period of time, the buyer shall be entitled to withdraw from the contract or to reasonably reduce the purchase price. Claims for damages on the part of the buyer, if any, shall be subject to the restrictions of section 8 of these General Terms of Delivery.

- (3) In the case of any violation of law by other manufacturers' products delivered by the seller, the seller, at its option, will assert its claims against the manufacturers and sub-suppliers to the account of the buyer or assign them to the buyer. In such case, there will only exist claims against the seller in accordance with this section 7 if judicial enforcement of the abovementioned claims against the manufacturers and sub-suppliers has been fruitless or, for instance in the case of insolvency, does not promise success.

§ 8 Liability for Damages on Grounds of Fault

- (1) The seller's liability for damages, for whatever cause in law, including without limitation for impossibility, delay, fault or wrong delivery, breach of contract, violation of obligations upon contract negotiations and tort, shall be restricted in accordance with this section 8 when it is a question of fault in the individual case.
- (2) Unless essential obligations of the contract are infringed, the seller shall not be liable in the case of simple negligence on the part of its company bodies, legal representatives, employees or other persons employed in performing contractual obligations. Essential obligations of the contract are the obligation to deliver the ordered item on time, its freedom from defects which impair its functionality or usability more than only insignificantly, as well as the obligation whose intent is to protect life and limb of the buyer's personnel or to protect its property from material damage.
- (3) Where the seller is liable, in principle, pursuant to section 8 (2), liability shall be restricted to damage the seller has foreseen as a possible consequence of a breach of contract at the time of the conclusion of the contract or the seller must have foreseen in observing due care. Indirect damage and consequential damage which result from defects in the ordered item shall be eligible for compensation only where such damage can typically be expected on proper use of the ordered item.
- (4) Even where essential obligations of the contract are violated, the seller's obligation to compensate damage to property and any further financial loss resulting from that shall be limited to the amount of 1 million euros per claim in the case of liability for simple negligence.
- (5) The above exclusions and limitations of liability shall, in the same scope, apply in favour of the seller's company bodies, legal representatives, employees and other persons employed in performing contractual obligations.
- (6) Where the seller provides technical information or advice and such information or advice does not form part of the seller's contractually agreed obligations, such technical information or advice shall be provided free of charge and any and all liability shall be excluded here.
- (7) The restrictions of this section 8 shall not apply to the seller's liability for intentional behaviour, to guaranteed quality features, for fault to life, the body or health or under the German Product Liability Act ("Produkthaftungsgesetz").

§ 9 Retention of Title

- (1) The intent of the retention of title as agreed below is to secure all existing and future claims of the seller against the buyer from the supply relationship between the contractual partners on the delivery of material (including outstanding balance claims from a current account relationship restricted to this supply relationship).
- (2) The seller shall have title in the goods the seller delivered to the buyer until full payment of all secured claims. The goods as well as the goods substituting them that are subject to retention of title pursuant to the below provisions will hereinafter be referred to as 'goods subject to retention of title'.
- (3) The buyer will keep safe the goods subject to retention of title for the seller free of charge.
- (4) The buyer shall be entitled to process and sell the goods subject to retention of title in the course of its routine business until the occurrence of an event of recovery (section 9). Pledging and the assignment as security shall not be admissible.
- (5) If the goods subject to retention of title are processed by the buyer, it shall be agreed that the processing shall be effected in the name and account of the seller as manufacturer and that the seller will directly acquire title or – if for processing material of several owners is used or the value of the processed item is higher than that of the goods subject to retention of title – co-ownership in the newly created item of the value of the goods subject to retention of title to the value of the newly created item. In the event the seller does not acquire ownership, the buyer here and now transfers to the buyer its future ownership or – in the above relation – co-ownership in the newly created item to the seller as a security. If the goods subject to retention of title are combined or inseparably mixed with other items into one unified item and if one of the other items is to be seen as the main item, the seller will, if the main item belongs to it, transfer pro-rata co-ownership in the unified item to the buyer as outlined in the relationship stipulated in sentence 1.
- (6) The buyer here and now assigns, as a security, the claim arising therefrom against the purchaser - or, in the case of the seller's co-ownership in the goods subject to retention of title, pro rata the share of co-ownership - to the seller for the event of resale of the goods subject to retention of title. The same shall apply to other claims that replace the goods subject to retention of title or arise otherwise with respect to the goods subject to retention of title, for instance insurance claims or claims under tort in the case of loss or destruction. The seller shall confer revocable authority to the buyer to collect, on its behalf, the claims assigned to the seller. The seller may revoke this authority of collection only upon the occurrence of an event of recovery.
- (7) If any third party attempts to access the goods subject to retention of title, including but not limited to seizure, the buyer will immediately notify such third party of the seller's ownership and inform the seller thereof to allow the seller to enforce its rights of ownership. If the third party is not able to reimburse the seller with the judicial or extrajudicial costs accruing in that context, the buyer shall be liable for these costs vis-à-vis the seller.
- (8) The seller will release the goods subject to retention of title as well as the items or claims replacing them to the extent that their value exceeds the amount of the secured claims by more than 50%. It is within the seller's discretion to select the items to be released thereafter.
- (9) If the seller withdraws from the contract (recovery event) because the buyer has acted contrary to the contract – including but not limited to default of payment – the seller shall be entitled to demand the return of the goods subject to retention of title.

§ 10 Specifications of the Goods, their Use and Processing

- (1) Section 2, number 4 of these General Terms and Conditions shall apply to the seller's specifications on the item of delivery.
- (2) Unless agreed otherwise, the buyer shall be responsible for checking / determining, on its own authority, whether our goods, upon compliance with the seller's specifications on the object of delivery or service in accordance with section 2 number 4 of these General Terms and Conditions, are suitable for the buyer's purposes / for the buyer's intended use; this shall come under the exclusive responsibility of the buyer.

§ 11 Trademarks

- (1) It shall not be admissible to offer or deliver products in replacement of the seller's products with a reference to these products or to associate product designations of the seller, regardless of whether these are protected or not, with the word 'replacement' (in German: 'Ersatz') or list them along with designations of replacement products in price lists or similar business documents.
- (2) Moreover, when using the seller's products for manufacturing purposes or when processing, it shall be forbidden, in particular in component descriptions, to use the seller's product designations, including but not limited to the seller's trademarks, on goods or packaging or in connection with related print or advertising material, without the seller's prior consent. The delivery of products under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured therefrom.

§ 12 Export Control

- (1) The buyer undertakes to comply with all applicable national and international export control regulations, including but not limited to Regulation (EC) 2580/2001 and Regulation (EC) 881/2002 in their legally valid versions as amended, as well as, if applicable, the US Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR) and other final use / final user controls ('catch-all'). The buyer shall be obliged to obtain in a timely manner time all required approvals and licenses as well as all other permissions required to use or export the delivery item under all of the applicable laws stated.
- (2) The buyer undertakes to issue End Use Certificates and to provide further documents necessary to file petitions with the competent authorities if required by the seller.
- (3) The buyer will be liable to the seller for violations of obligations under XIV.1 and XIV.2, as well as for damages due to measures undertaken by government authorities which directly results from incorrect specifications on the part of the buyer.

§ 13 Secrecy and Data Protection

- (1) The contracting parties will keep secret and treat as strictly confidential any and all information or material which becomes known to them covered by the duty to observe secrecy in oral or written form or otherwise, directly or indirectly, that is marked as confidential or, by its nature, is usually to be regarded as confidential and they will only use such information or material as part of the services covered by this contract and neither forward such information to any third party nor make it accessible in another form to any third party without the other party's consent. Furthermore, they will take all reasonable measures to exclude and prevent any third party from accessing such information. In particular, the ordering entity will treat as confidential all information about the methods and technical procedures we use.
- (2) Exception from the duty not to disclose:
 - Not covered by the duty to observe secrecy shall only be such information and information material
 - Which, at the time it becomes known, is already publicly known, i.e. easily accessible by any third party;
 - Which, after it has become known, is made legally accessible to a contractual partner by a third party who is not subject, in this respect, to any duty to observe secrecy vis-à-vis the other contractual partner.
 - Which, upon a government authority's request or the request of another authorised third party, must compulsorily be reported to that authority or party;
 - Which necessarily must be reported to legal or tax advisors of a partner for advice purposes.
- (3) The parties will bind any and all employees or third parties they employ for performing the services under this contract by a duty to observe secrecy in line with the aforesaid.
- (4) We undertake not to violate any provisions of the law on data protection within the context of our contractual performance. We will oblige our employees to comply with all provisions of the law on data protection and oblige such persons to keep secrecy. We will coordinate privacy-sensitive activities with the ordering entity's data protection supervisor.
- (5) Unless agreed otherwise, the obligations under section 13 numbers 1 to 4 of these General Terms and Conditions shall be applicable for an indefinitely.

§ 14 Final Regulations

- (1) If the buyer is a merchant, a legal entity under public law or a special fund under public law, or if the buyer does not have a general place of jurisdiction within Germany, the place of jurisdiction for any disputes from the business relationships between the seller and the buyer shall be, at the choice of the seller, Augsburg, Germany, or the buyer's registered office. However, Augsburg, Germany, shall be the exclusive place of jurisdiction for any lawsuits against the seller in such cases. This rule shall not affect any obligatory statutory provisions on exclusive places of jurisdiction.
- (2) The relationship between the seller and the buyer shall exclusively be subject to the law of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- (3) Where there are loopholes in the contract or these General Terms of Delivery, such legally effective provisions shall be deemed agreed to these such loopholes which the contractual partners had agreed considering the contract's economic intents and the intent of these General Terms of Delivery if they had been aware of the loophole.
- (4) The English version of these terms shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail.

Note:

- (1) The buyer acknowledges that the seller will save data from the contractual relationship under Section 28 of the German Law on Data Protection ("Bundesdatenschutzgesetz") for the purpose of data processing and that the seller retains the right to transmit the data to third parties (for instance insurance companies) to the extent necessary for the compliance with the contract.

As of April 2017