

General terms and conditions (GTC) of Neuruppiner Industrieverlagerungs- GmbH (NIG)

I. General

These General Terms and Conditions of NIG also apply to all future business between the contracting parties, without the need for a repeated reference to our General Terms and Conditions. With the first inclusion of these General Terms and Conditions, a framework agreement for such future legal transactions is concluded. They also apply if we do not refer explicitly to it in later contracts, especially, if we supply service or make delivery to the customer, being fully aware of opposing or differing from the General Terms and Conditions of the customer. Our services and deliveries are governed exclusively by the following General Terms and Conditions. Our services are only subject to the law on contracts for work and services. Differing General Terms and Conditions of purchase or procurement of the principals – which are not expressly recognized by us, shall not be binding for us, even if we do not explicitly contradict them.

II. Quotations and conclusion of contract, content of services

1. Our quotations offered to the customer remain binding for 4 weeks. Side agreements, modifications as well as service specifications require a written confirmation by us. Only the management and the branch management of the NIG are authorized to conclude this agreement. All other employees of NIG, especially the mechanics have no power of representation in this respect.

2. We reserve all rights of property and ownership rights on quotations, drafts and plans and other documents; they may only be made accessible to third parties if we have granted prior written consent thereto; and have to be returned to us free of charge on request.

3. All quotations, if nothing to the contrary has been agreed, are created on the basis of a temporally continuous and incessant performance of the delivery or service.

4. The services to be rendered by us are conclusively defined in the service and interface description provided with our quotations. All services that go beyond the service and interface description in the quotation have to be agreed separately. If a place of performance outside Germany is agreed upon, the obligation to perform concerning safety at work and environmental protection should conform to the agreements made and in case of doubt to the regulations applicable in Germany. The customer is responsible for respecting statutory and other regulations applicable at a place of performance outside Germany.

III. Prices, terms of payment, default in payment

1. The prices agreed upon conclusion of the respective contract shall apply; especially the prices quoted in the order confirmation. All prices are to be understood net plus the applicable statutory value added tax. All public charges (taxes, charges, customs duties) that arise from or in connection with the conclusion or the completion of the contract outside Germany are to be borne by the customer.

2. We preserve the right to adjust our prices reasonably, if changes in cost after signing the contract come about, particularly due to collective wage agreements, preliminary suppliers or fluctuations of the exchange rate. On request, we shall substantiate the reasons for the price adjustment.

3. In case of changing the scope of services according to II. 4., the additionally agreed services shall be charged separately. If – contrary to II. 3. (continuous performance of work) interruptions or delays during the performance of the services come about, due to any reasons beyond the control of NIG, the arisen additional costs, additional travels as well as waiting times shall be charged additionally to the customer on the basis of the charge rates included with the quotation.

4. Our invoices are payable without deductions within 14 days from date of invoice, unless other terms of payment have been agreed. Default interest according to § 288 BGB will be charged from the day of expiry of the settlement date with reservation to assertion of further claims.

5. We are entitled to use incoming payments to settle previous accounts payable, net costs and interest of the principal receivable and finally the principal receivable. The purchaser is entitled to offset and retention rights if its counter claims have been legally determined, are undisputed by us or have been acknowledged by us. In addition to this, the right of retention only exists if the pleaded counter claim is based on the same contractual relationship as our claim.

6. If the customer does not pay due invoices, exceeds a granted date of payment, or if, after signing the contract, the customer's financial standing declines or we receive unfavorable information about the customer after conclusion of the contract that might question the ability to pay or the creditworthiness of the customer, we are entitled to declare the entire remaining outstanding debt immediately payable and via an amendment of the agreements to require advance payment or collateral security or after executed delivery to require immediate payment of all our invoices, which are based upon this legal relationship. This applies in particular, when the customer has come into default of payment, cheques written out by the customer are not honored, bills of exchange issued by the customer are not paid, or when insolvency proceedings have been commenced against the assets of the customer, or the petition to open insolvency proceedings has been dismissed due to a lack of sufficient assets.

IV. Time of delivery and performance, delay in performance

The agreed performance time are only approximately, if a fixed date was not expressly agreed in writing. The adherence to our obligation to perform presupposes timely and proper fulfillment of the customer's contractual obligations. If advance payment has been agreed or any documents, permits or releases have to be provided for us by the customer any agreed delivery period shall not begin before all mentioned conditions have been fulfilled. The objection of a non-fulfilled contract remains reserved to us.

In any case of force majeure or any other unforeseeable, extraordinary circumstances beyond our control e.g. stoppages due to fire, flooding or similar circumstances; failure of production facilities or machines, non-compliance with periods of delivery and failure to deliver on part of our suppliers as well as interruptions of business operations due to shortage of raw materials, of energy or of workforce, strike, lock-out, difficulties encountered upon the arrangement of means of transport, traffic troubles, interventions by the authorities, we shall be entitled – if we are prevented from meeting our contractual obligations on time by these circumstances through no fault of our own - to delay delivery for the period of disruption of work and an additional reasonable start-up time. If the delivery of the goods or the performance is hereby delayed for more than one month, both parties shall be entitled to withdraw from the contract with exclusion of any claims to compensation. We shall only be in default upon expiry of a reasonable grace period granted by the customer.

2. If agreed service periods are not met as result of circumstances we are responsible for, the customer may withdraw from the contract by making a written statement after expiry of a reasonable grace period without any results that was granted by the customer.

3. In case of default, our liability for damages according to the regulations is limited to the regulations in VIII.

V. Performance of work

1. NIG carries out the installations works generally independently with its own supervisory staff, hand and installation tools and common aids.

2. NIG is entitled to engage subcontractors for deliveries and services.

3. NIG can assign subcontractors for the provision of lifting equipment and for the carriage of machines and equipment.

4. The works on the construction sites are carried out by personnel wearing company work clothing. These work clothing are marked with the lettering of NIG.

5. NIG ensures compliance with the existing regulations relating to accident prevention according to German law. In addition, the client has to indicate special requirements concerning safety regulations before placing of the order, especially concerning regulations relating to accident prevention according to foreign law.

6. The client has to provide NIG all information required for proper and professional delivery and services before the commencement of the performance.

7. The customer shall ensure a free and unrestricted access to the mounting surfaces as well as surfaces that are in condition ready for mounting.

VI. Retention of title

1. The delivered goods remain our property until full payment of purchase price.

2. In the event of seizures or other actions by third parties, the customer must notify us immediately in writing so that we can lodge a lawsuit in accordance with § 771 of German Code of Civil Procedure (ZPO).

3. Customer handling, processing and reshaping of goods supplied by us subject to retention of title, shall always be done on our behalf without giving rise to any commitments or liabilities on our part. If the delivered goods subject to retention of title are processed with other materials, which are not our property, we shall acquire coownership of the resulting good in proportion to the value of our goods to that of the other goods processed at the time of the processing (invoice total including VAT). Moreover, the same shall apply to the goods processed as for the goods delivered by us subject to the retention of title.

4. If the goods delivered by us subject to retention of title are inseparably mixed or combined with other materials which are not our property, we shall acquire coownership of the resulting good in proportion to the value of our goods to that of the other goods processed at the time of the mixing or combination (invoice total including VAT). If the mixing or combination of the goods has been done in such a way that the goods of the customer is to be considered to be the main product; it is agreed that the customer transfers ownership to us of proportionate value.

5. In case of the customer acting contrary to the contract – in particular default of payment of more than 10% of the invoice total for a significant period of time, we are – without affecting our other compensation claims – entitled to withdraw from the contract and to reclaim the goods already delivered by us. After taking back the goods, we are entitled to dispose of it.

VII. Rights of the customer in the case of deficiencies

1. For delivery of fungible goods shall be:

a) NIG shall immediately be notified in writing of any apparent material defects, wrong deliveries and deviations in quality, at the latest 7 workdays after the detection. In order to examine the defective good, it shall be put to our disposal on request.

b) In case the delivered goods were defective, we are, at our choice, only obliged to the rectification of the defect or to the delivery of goods free from defect (supplementary performance). If we are not prepared to provide rectification or to deliver newly manufactured goods, or not be in a position to do so, particularly if remedial action is delayed beyond reasonable periods on grounds which we are responsible for or if supplementary performance otherwise fails, the customer, at his choice, shall be entitled to withdraw from the contract or demand a reduction. Supplementary performance shall be considered as failed after the third attempt, if nothing else arises from the kind of object or the other conditions. If the customer has incurred damage or suffered from futile expenditures resulting from goods delivered by us, the liability of NIG in this instance is defined according to VIII.

2. For mounting and storage of machines and facilities as well as production and delivery of rejected goods shall be:

a) In case of defectiveness of the delivery, the customer's claim is first restricted to supplementary performance that we shall fulfill at our choice by rectification of defects or replacement.

b) If we should not be prepared to supplementary performance or if the customer cannot be reasonably expected to accept it, in particular, by periods exceeded by us for an unreasonable length of time or due to failure of the supplement performance, the customer at his choice is entitled to withdraw from the contract according to the legal framework, to claim reduction of the work wages or independently seek a remedy of the deficiency at our expenses, as well as to demand compensation instead of performance.

Supplementary performance shall be considered as failed after the third attempt, if nothing else arises from the kind of object or the other conditions. In case the delivered service is construction work in the sense of § 634a of the German Civil Code (BGB), the customer is not entitled to withdraw under the above-mentioned conditions.

The right of withdrawal for some other reason remains hereby unaffected.

c) In case of apparent deficiencies the customer shall lose his right if, within 14 days after completion of the work and after notifying the customer thereof, the deficiencies are not declared in writing. If the customer has incurred damage or suffered from futile expenditures resulting from services rendered by us, the liability of NIG in this instance is defined according to VIII.

VIII. Liability

1. Our company shall only be liable for damage or futile expenses - independently of their legal basis - if such damage or futile expenses

a) were caused by us or by one of our vicarious agents by culpable violation of an essential contractual obligation or

b) resulted from grossly negligent or intentional violation of contractual obligations by us or by one of our vicarious agents.

2. If we are liable for the breach of a contractual obligation according to No. VIII. 1. a. without the existence of a grossly negligent or intentional behavior, the liability shall be limited to the foreseeable typical damage. In such a case, we are especially not liable for the customer's loss of profit and for not foreseeable collateral consequential damages.

The aforementioned limitations on liability according to VIII point 1 and point 2 shall apply equally to damages caused by the gross negligence or criminal intent of our employees or agents, as far as they are not directors or senior executives.

3. NIG shall only be liable for damages within the framework of the insurances concluded with them. For damages upon deliveries and services during mounting works, as long as they are under our control and not intentionally or grossly negligent, we shall be liable within the framework of the mounting insurance concluded, per order up to EUR 2.500.000,-.

Insurance contracts with higher insurance amount shall be concluded by NIG, as circumstances require.

4. The aforementioned limitations on liability according to VIII. 1. and 2 shall not apply where under the stipulations of the Product Liability Act we cannot legally exclude our liability or where claims are made against us based on violations of life, limb, or health of individuals.

5. NIG shall be liable for damage to persons or objects, as far as they are under our control and not intentionally or grossly negligent, within the framework of the comprehensive general liability insurance concluded.

The lump sum insured per damage event is EUR 6.000.000,-.

If the goods supplied by us lack a warranted quality, we shall assume liability only for damage resulting from the lack of the warranted quality.

6. Any more extensive liability for compensation than that specified in VIII.1.-5. shall be excluded, irrespective of the legal nature of the claim being made. This shall particularly also apply for damage claims ensuing from fault at conclusion of contract according to § 311.3 German Civil Code (BGB), positive infringement of the contract according to § 280 BGB or on account of tortious claims according to § 823 BGB.

7. As far as the liability for compensation against us is excluded or restricted according to VIII. 1-5, this shall be valid as well with respect to the personal liability for compensations of our employees, staff members, representatives and vicarious agents.

8. NIG is liable for transport damages caused to machines and systems including spare parts and accessories. Provided that the transports are carried out within a shipping order that has been released by NIG, we are liable in the scope of a cargo transport insurance for damages up to 500.000,00 € per means of transport.

Upon request, NIG takes out a separate, project-related transport insurance which covers a higher value of the goods. In such cases, the insurance premiums are to be borne by the customer.

IX. Period of limitations for claims

1. Any claims by the customer for defects of goods or any services performed in breach of our obligations - including damage claims and claims for compensation of futile expenses - shall become time-barred within one year of the statutory start of the limitation period, to the extent that nothing else arises from the subsequent sections 2. to 3. If the customer or another buyer in the delivery chain after the customer has fulfilled claims of the consumer due to defects of items newly produced by us that were also delivered as newly produced items to the consumer, the statute of limitations of the consumer claims against us according to §§ 437 and 478, 2 BGB shall commence at the earliest two months after the customer or other buyer in the delivery chain has fulfilled any non-statute-barred consumer claims. This suspension of expiration described in sentence 2 shall end no later than five years after the date on which the product in question has been supplied to the customer by us.

2. In the case of goods newly produced and supplied by us, which have been used in accordance with their customary purpose for a building structure as well as for building services provided in the sense of § 634 a, 1 sentence 2 BGB, claims of the customer shall become time-barred within 5 years of the statutory start of the limitation period. Contrary to the sentence 1, a two-year limitation period shall apply, if the customer used the products supplied by us for the performance of contracts or if the building services were part of contracts, which fully included part B of the German Construction Contract Procedures (VOB). The claims of the customer against us shall become time-barred in any cases, as soon as the claims of the customer / contractual partner of our customer as a result of defects in services supplied by us become time-barred, but shall end at the latest five years after the date on which we delivered the product in question to the customer.

3. The provisions made in 1 to 3 shall not apply to the time of limitation for claims based on violations of life, limb, or health of individuals, as well as not for the limitation period for claims under the Product Liability Act or because of a defect in title with regards to the goods supplied by us. Neither shall these provisions apply to the limitation of the customer's claims based on defects of the goods supplied by us, which we deceitfully concealed, or if we violated any of our duties intentionally or with gross negligence. In the cases enumerated in point 3, the limitation of these claims is regulated by the statutory limitation periods.

X. Place of performance, place of jurisdiction, applicable law

1. The place of performance and the place of jurisdiction for any claims between us and traders or juristic persons under public law or special funds under public law shall be the registered office of our company, unless an imperative provision of law applies.

We shall, however, have the right to institute legal proceedings against a client at his legal place of jurisdiction.

2. The legal relationship between us and the customer or between us and third parties shall only be subject to the laws of the Federal Republic of Germany that apply to German traders. The UN Convention on Contracts for the International Sale of Goods and the German private international law are explicitly excluded.

XI. Final provisions

1. Should one of the above-mentioned provisions be invalid or excluded by a special agreement, this shall hereby not affect the validity of the remaining provisions.

2. Customer data within the framework of our mutual business relationships shall be stored in accordance with the Federal law on data protection.