

Terms and conditions of sale, delivery and payment

1. General

1.1.

The following terms and conditions shall apply to all our quotations, sales, deliveries, services and legal relationships between ourselves and our customer to the extent that individual agreements do not create regulations to the contrary. Terms and conditions of business of our customer partly or totally contradicting or supplementing our terms and conditions or statutory provisions are hereby expressly challenged, unless we have approved the terms and conditions in writing in the individual case. They shall also not become a part of the contract even if we perform delivery despite knowledge of contradictory or supplementary terms and conditions. If our customer has not been informed of the validity of our terms and conditions of business upon conclusion, they shall nevertheless be applicable if our customer knew them or must have known them from a previous business relationship.

1.2.

Our terms and conditions shall only apply towards entrepreneurs in the sense of § 14 German Civil Code.

1.3.

Apart from this, German law shall exclusively apply to the contractual relationships. Application of UN purchase law has been ruled out.

1.4.

Oral side-agreements do not exist. Agreements, amendments or supplements to the contract deviating from the present terms in the individual case shall be done by the management or by agents specifically authorised for this purpose. Oral agreements or declarations by other persons shall only be effective if they are confirmed in writing or by the management or said agents specifically authorised for this purpose.

1.5.

All orders placed with us by the customer directly or via field-service employees shall require acceptance by a written order confirmation, unless it is a question of a cash transaction.

2. Prices

2.1.

To the extent not expressly agreed to the contrary, our prices shall apply ex works exclusive of packaging, which shall be charged separately.

2.2.

We reserve the right to change our prices accordingly if reductions or increases in costs occur after conclusion of the contract, in particular as a result of wage agreements or changes in material prices. They shall be proven to the customer upon request.

2.3.

The statutory value added tax has not been included in our prices; it shall be stated separately on the invoice to the statutory amount on the date of invoicing.

3. Delivery and service time

3.1.

Delivery dates or periods not expressly agreed as being binding shall exclusively be non-binding statements. The delivery period stated by us shall only commence when technical questions have been clarified. Likewise, the customer shall fulfil all obligations for which it is responsible properly and in good time.

3.2.

For call orders, a suitable delivery period, which may not fall short of 6 weeks after the call, shall be agreed. If production and acceptance dates have not been agreed, we can demand a binding statement no later than 3 months after the order confirmation. If the customer fails to comply with this request within three weeks of dispatch of our correspondence in this regard, we shall be entitled to set a two-week period of grace and to withdraw from the unfulfilled part of the contract and/or to demand damages if the period expires fruitlessly.

3.3.

In other cases in which the customer falls into arrears of acceptance or culpably breaches its other duties to cooperation, we shall be entitled to demand reimbursement of the damage incurred by us to this extent including all and any additional expenditure, subject to further-reaching claims.

3.4.

To the extent that the prerequisites of sub-section 3.2 or 3.3 have been fulfilled, the risk of chance destruction or chance deterioration of the object of purchase shall pass to the customer at the point in time at which the latter has fallen into acceptance or debtor's arrears.

3.5.

In divisible deliveries, we shall be entitled to make part deliveries to the extent that they are reasonable for the customer. In the event of prior information, we shall also be entitled to make premature deliveries to the extent that they are reasonable for the customer.

3.6.

If indications for the fact that the customer's solvency is at risk (e.g. petition for opening of insolvency proceedings, commencement of compulsory enforcement measures against it, presentation of uncovered cheques) result following conclusion of the contract, we shall be entitled to reject service and, following setting of a fruitless period for the production of collaterals in the form of absolute bank sureties or bank guaranties or advance payment, to withdraw from the contract subject to further-reaching claims. Setting of a period shall not be necessary if the risk of the customer's solvency is obvious.

3.7.

To the extent that circumstances for which we are not answerable make performance of accepted orders more difficult, delay them or make them impossible, we shall be entitled to postpone delivery or the residual delivery or part delivery for the duration of the prevention or to withdraw from the contract partly or totally without claims to damages accruing to the customer. We shall not be answerable, for example, for official interventions, disturbances of operations, strikes, lock-outs, industrial disturbances caused by political or economic situations, lacks of necessary raw and operational materials, delays in transport or traffic disruptions or inevitable incidents occurring with us, our sub-suppliers or in outside companies upon whom maintenance of our own operations is dependent.

The customer shall be informed of the lack of availability of the delivery without delay.

All and any consideration rendered by it shall be reimbursed without delay upon withdrawal from the contractual relationship.

3.8.

If the underlying purchase contract is a fixed transaction within the meaning of § 286 sub-section 2 no. 4 German Civil Code or of § 323 sub-section 2 no. 2 German Civil Code or of § 376 German Commercial Code, we shall be liable according to the statutory directives. The same shall apply if arrears in delivery for which we are answerable entitle the customer to claim loss of its interest in the further performance of the contract. In such a case, our liability shall be limited to the foreseeable damage typically occurring if the arrears in delivery are not based on a deliberate breach of the contract for which we are answerable, in which context culpability of our representatives or vicarious agents shall be ascribed to us.

Likewise, we shall be liable towards the customer according to the statutory directives in arrears of delivery if they are based on a deliberate or grossly negligent breach of the contract for which we are answerable, in which context culpability of our representatives or vicarious agents shall be ascribed to us. Our liability shall be limited to the foreseeable damage typically occurring if the arrears in delivery are not based on a deliberate breach of the contract for which we are answerable.

3.9.

In the event of a breach of delivery for which we are answerable being based on a culpable breach of an essential contractual duty, in which context culpability of our representatives or vicarious agents shall be ascribed to us, we shall be liable according to the statutory directives with the proviso that, in such a case, the liability for damages shall be limited to the foreseeable damage typically occurring.

3.10.

Apart from this, the customer can demand liquidated damages to the amount of 3% of the delivery value, albeit no more than 15% of the delivery value as a maximum, for each completed week of arrears in delivery for which we are answerable.

3.11.

Further-reaching liability for arrears in delivery for which we are answerable has been ruled out. The customer's further statutory claims and rights accruing alongside the claim to damages on account of arrears in delivery for which we are answerable shall remain unaffected.

4. Dispatch and risk

4.1.

The subject matter of the contract shall be dispatched by us ex works at the customer's risk, even if freight and other costs are charged to us. The subject matter of the contract shall only be insured by us against transport damage upon express written instruction by and for the account of the purchaser.

4.2.

In sales ex works, we shall place the commodities on the collector's vehicle according to the driver's instructions. Loading safe for transport and operation according to the state of loading securing technology at the time shall be by the collector, which shall use driving personnel which has been trained accordingly. The collector shall also provide the necessary aids for securing the load.

4.3.

If dispatch is delayed at the customer's request or in the event of arrears in acceptance, we shall store the commodities at the customer's risk and expense. In such a case, notification of readiness for dispatch shall be equated to dispatch.

4.4.

We shall not take transport and all other packaging back according to the provisions of the Packaging Ordinance; an exception shall be pallets. The customer shall ensure disposal of the packaging at its own expense.

5. Payment terms

5.1.

To the extent not agreed to the contrary, invoices shall be paid in the agreed currency within 30 days from date of invoice without deduction. Discount shall only be granted following separate agreement and shall be determined from the invoice value ex delivery works.

5.2.

Part deliveries shall be charged immediately and shall each be due for payment individually, regardless of the ending of the total delivery.

5.3.

Payments shall only be deemed made when we can finally freely dispose of the amount. Payment by bill or cheque shall only be accepted following separate agreement. Discount and bill charges shall in any case be paid by the customer. If payment by bill is agreed, the term of the bills shall not exceed 90 days starting from the date of the invoice.

5.4.

Only employees of our company presenting a written power of attorney for collection are entitled to accept payments.

5.5.

In failure to pay, the customer shall fall into arrears no later than 30 days after receipt of the commodities. During arrears, it shall pay interest on the money owed to the amount of 8% points above the basic rate of interest. We reserve the right to prove and to claim higher damage from arrears.

5.6.

The customer shall only have the right to offset if its counterclaims are legally effective, undisputed or have been acknowledged by us. It shall only be authorised to exercise the right to retention to the extent that its counterclaim is based on the same contractual relationship.

6. Retention of title

6.1.

Until performance of all claims, incl. all balance claims from current account, accruing to us against the customer now or in future, the delivered commodities (conditional commodities) shall remain our property. In the event of conduct of the customer in breach of contract, e.g. in arrears in payment, we shall have the right to take the conditional commodities back after prior setting of a suitable period of grace. If we take the conditional commodities back, this shall represent withdrawal from the contract. If we seize the conditional commodities, this shall also be a withdrawal from the contract. We shall be entitled to exploit the conditional commodities after taking them back. After deduction of a suitable amount for the costs of exploitation, the yield from the exploitation shall be offset against the amounts owed to us by the customer.

6.2.

The customer shall treat the conditional commodities carefully and insure them adequately at its own expense at the new value against fire, water and theft damages. Maintenance and inspection work becoming necessary shall be done in good time by the customer at its own expense.

6.3.

The customer shall be entitled to sell and/or to use the conditional commodities properly in business dealings as long as it is not in arrears of payment. Seizures or transfers by way of security shall be inadmissible. The claims originating from the resale or for any other reason (insurance, tort) with a view to the conditional commodities (incl. all balance claims from a current account) are here and now assigned to us by the customer by way of security; we hereby accept the assignment. We revocably empower the customer to collect the claims assigned to us in its own name and for its own account. The collection authorisation can be revoked if the customer fails to comply with its payment obligations properly. The customer is also not authorised to assignment of these claims for the purposes of collection of the claim by means of factoring, unless the obligation of the factor to effect consideration to the amount of the claims directly to us as long as claims still accrue to us against the purchaser is simultaneously substantiated.

6.4.

Processing or re-shaping of the conditional commodities by the customer shall in any case be done on our behalf. As soon as the conditional commodities are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the conditional commodities (final invoice value incl. value added tax) to the other processed objects at the time of the processing. The same shall apply to the new object originating through processing as for the conditional commodities. In the event of inseparable blending with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the conditional commodities (final invoice value incl. value added tax) to the other blended objects at the time of the processing.

If the customer's object is to be regarded as the main object as a result of the blending, the purchaser and we have agreed that the purchaser assigns co-ownership to this new object pro rata; we hereby accept this assignment. Our sole or co-ownership to an object originating in this way shall be kept on our behalf by the customer.

6.5.

In cases of third-party interventions against the conditional commodities, in particular pledging, the purchaser shall make reference to our ownership and notify us immediately so that we can assert our ownership rights. If the third party is not in the position to reimburse the judicial or extrajudicial costs incurred in this context, the purchaser shall be liable therefor.

6.6.

We shall be obliged to release the collaterals accruing to us to the extent that the realisable value of our collaterals exceeds the claims to be secured by more than 10%. In this context, we shall be responsible for the selection of the collaterals to be released.

7. Warranty/liability

7.1.

The agreed property of the subject matter of the contract owed by us shall result exclusively from the contractual agreements with the purchaser and not from other advertising statements, brochures, consultancy and similar for which we shall not assume any liability to this extent. Assurance of an attribute or assumption of a guarantee (e.g. in the sense of § 443 German Civil Code) shall not be connected with the agreed property.

7.2.

Deviations in dimensions and material customary in the trade and/or caused by production technique shall not entitle to complaints about the subject matter of the contract. To the extent available, DIN standards and our factory standards shall apply to tolerances. The contents of packages (quantities) shall be determined by weighing. Slightly deviating quantities shall be explained by differing densities of the raw material and shall not mean a reason for complaint. Likewise, weights stated in the catalogue shall be non-binding guidelines for the determination of the dispatch costs.

7.3.

The purchaser shall be obliged to notify us of obvious defects in the subject matter of the contract in writing within a period of 2 weeks of receipt of the goods, the right to make claims from warranty otherwise being ruled out. Punctual dispatch of the notification shall suffice for compliance with the period.

With a view to the purchaser's duty to examination and notification of defects, the regulation of § 377 German Commercial Code shall remain unaffected.

The purchaser shall give our agents the opportunity of inspecting and examining the subject matter of the contract giving rise to complaint.

7.4.

All warranty claims shall be forfeited in improper use, treatment or storage of the subject matter of the contract, failure to comply with our instructions and guidelines, damage and destruction of the subject matter of the contract following passage of risk. For products used for transport and lifting, specific precautionary measures are necessary. The purchaser engages to examine the load-bearing capacity of these products before they are used.

7.5. To the extent that a defect in the subject matter of the contract exists, we shall be entitled, at our choice, to subsequent performance in the form of remedying of the defect or delivery of a new, defect-free object. In the event of remedying of the defect, we shall be obliged to bear all expenditure necessary for the purpose of remedying the defect, in particular transport, travel, work and material costs, to the extent that they are not increased by the fact that the subject matter of the contract has been taken to a place other than the place of performance.

7.6.

If subsequent performance has failed, the customer can, at its choice, demand reduction of the purchase price or declare withdrawal from the contract. However, a right to withdrawal shall not accrue in the event of an inconsiderable defect.

Subsequent performance shall be deemed to have failed with the second vain attempt, unless further attempts at subsequent performance are suitable and can be reasonably expected of the customer on the basis of the subject matter of the contract.

Customer's claims to damages and reimbursement of vain expenditure shall only exist according to the following provisions. Apart from this, they have been ruled out.

7.7.

The customer's warranty claims shall be barred by limitation 1 year after supply of the subject matter of the contract to the purchaser, unless we have deceitfully withheld the defect. In such a case, the statutory regulations shall apply. Our duties from Section 7.8 in combination with Section 7.9 shall remain unaffected.

7.8.

We shall be obliged to take the new goods back or to reduce the purchase price, even without the setting of a period otherwise necessary, in accordance with the statutory provisions if the purchaser's customer as a consumer of the sold new movable object (sale of consumer goods) has been able to demand taking back of the goods or reduction of the purchase price from the purchaser or such a claim to recourse is made against the purchaser on account of the defect to the commodity. Additionally, we shall be obliged to reimburse the purchaser's expenditure, in particular transport, travel, work and material costs, which would have to be borne by it in the relationship to the final consumer within the framework of the subsequent performance on account of a defect in the commodity existing upon passage of risk from us to the customer. The claim shall be ruled out if the purchaser has failed to comply with its duties to examination and notification of defects owed according to § 377 German Commercial Code.

7.9.

The obligation pursuant to Section 7.8. shall be ruled out to the extent that it is a question of a defect on the basis of advertising statements or other contractual agreements not coming from us or if the purchaser has made a specific guarantee towards the final consumer. The obligation shall likewise be ruled out if the purchaser itself was not obligated to exercising the warranty rights towards the final consumer on the basis of the statutory regulations or did not make this complaint against a claim made against it. This shall also apply if the purchaser has assumed warranties towards the final consumer exceeding the customary extent.

7.10.

We shall be liable without limitation according to the statutory provisions for damage to life, limb and health based on deliberate or negligent breach of duties by us, our legal representatives or our vicarious agents and also for damage covered by liability according to the Product Liability Act. For damage not covered by sentence 1 and based on deliberate or grossly negligent breaches of contract by us, our legal representatives or our vicarious agents, we shall be liable according to the statutory provisions. But in such a case, the liability for damages shall be limited to the foreseeable damage typically occurring to the extent that we, our legal representatives or our vicarious agents have not acted with malice aforethought. To the extent that we have given a property or shelf life guarantee with a view to the commodities or parts thereof, we shall also be liable within the framework of this guarantee. For damage based on the lack of the guarantee property or shelf life, but not occurring directly on the commodity, we shall however only be liable if the risk of such a damage is obviously covered by the property and shelf life guarantee.

7.11.

We shall also be liable for damage caused by simple negligence to the extent that the negligence affects a breach of contractual duties, compliance with which is of particular significance for the achievement of the purpose of the contract (cardinal duties). However, we shall only be liable to the extent that the damage is typically connected with the contract and is foreseeable.

7.12.

Further-reaching liability has been ruled out without regard for the legal nature of the claim being made; this shall in particular apply to claims from tort or claims for reimbursement of vain expenditure in lieu of performance. Our liability pursuant to Sections 3.8 to 3.11 of the present agreement shall remain unaffected. To the extent that our liability has been limited or ruled out, this shall also apply to the personal liability of our employees, workers, fellow-workers, representatives and vicarious agents.

7.13.

Customer's claims to damages on the basis of a defect shall be barred 1 year from delivery of the commodities. This shall not apply in the event of injuries to life, limb or health for which we, our legal representatives or our vicarious agents are answerable or if our legal representatives have acted deliberately or grossly negligently or if our simple vicarious agents have acted with malice aforethought.

8. Confidentiality

The customer shall be obliged to use business and operational secrets entrusted to it or becoming known to it on the occasion of the business relationship exclusively for the performance of the present contract and not to exploit them and also to keep them secret towards third parties during the term and following the end of the contractual relationship.

9. Protective rights

We unlimitedly reserve ownership, copyrights and, if applicable, industrial protection rights to all ideas, diagrams and other documents, regardless of the form in which they are disclosed. They may not be made accessible to third parties. Diagrams and other documents forming parts of quotations shall be returned to us without delay upon request if the order is not placed by us. Parties ordering special productions shall assume complete liability towards us for the fact that third-party protective rights are not impinged by the production and delivery of the objects.

10. Miscellaneous provisions

10.1.

We shall be entitled to process the data received from our customers on the basis of the business relationships pursuant to the provisions of the Federal Data Protection Act, in particular also transmitting the data necessary for loan insurance to the loan insurance companies.

10.2.

For merchants, the place of performance shall be our company's registered office.

10.3.

The sole place of jurisdiction for all disputes arising from the present contractual relationship, including those from bills, cheques and other deeds, shall be our company's registered office if our customer is a merchant or has given the apparent indication of being a merchant within the meaning of the German Commercial Code in an ascribable way. We shall however be entitled also to sue the customer at the court at its place of residence.

The same shall apply if the customer has no general place of jurisdiction in the Federal Republic of Germany or its place of residence or customary abode is unknown at the time of initiation of proceedings.

10.4.

If individual provisions of the contract with the customer/purchaser, including the present general terms and conditions of business, are or become partly or totally ineffective, the validity of the remaining provisions shall not be affected. The partly or totally ineffective regulation shall be replaced by a regulation coming as close as possible to the ineffective one in its commercial outcome.

The present terms and conditions shall apply to the following companies:

Nevoga GmbH, Znaimerstraße 4, 83395 Freilassing, Germany
Nevoga spol.s.r.o., Kotkova 22, 66902 Znojmo, Czech Republic

The present terms and conditions shall apply to the following companies:

Nevoga GmbH, Znaimerstraße 4, 83395 Freilassing, Germany
Nevoga spol.s.r.o., Kotkova 22, 66902 Znojmo, Czech Republic