

General terms and conditions



1. General

- 1.1. The terms and conditions set out below shall apply to all transactions of Novega Produktionssysteme GmbH.
- 1.2. Our offers are always non-binding unless there is no temporary binding mentioned in the offer.
- 1.3. Orders placed by the purchaser shall only be binding upon our written confirmation. Our order confirmation in writing shall prevail for the scope of the delivery.
- 1.4. We preserve all property and copyrights regarding all samples, quotations, drawings, plans and other documents – including those in digital form – they may not be disclosed to third parties.

2. Prices and payment

- 2.1. Prices are valid ex works excluding packaging, freight, postage and insurance plus value-added tax as applicable at the time.
- 2.2. Additional costs for express shipping, insurance and any other special arrangements shall be borne by the purchaser.
- 2.3. Unless the payment conditions have not been agreed expressly in writing, all accounts payable are due 10 days after receipt of the invoice. If the term of payment is exceeded, all legal consequences of default shall be applied without separate reminder. Further, we reserve the right to assert further legal rights and the usual bank fees and charges shall be billed for open business credits.
- 2.4. Partial deliveries shall be invoiced immediately.
- 2.5. In case of delayed payment by the purchaser or if, in our opinion, we receive unsatisfactory information, we shall be entitled to ask for subsequent advance payments for any deliveries not yet effected. Further we can ask for payment in advance in other special cases, for example if the business relation is only occasional.
- 2.6. The purchaser may withhold payments or set them against any counterclaims only if they are undisputed or legally ascertained.

3. Delivery time, delivery delay

- 3.1. The delivery time is subject to the agreements of the contract parties. Compliance with them by us shall presuppose that all commercial and technical questions between the contracting parties have been clarified and the purchaser has fulfilled all incumbent obligations as for example the provision of any documents, testing materials, approvals, clearances as well as any agreed advance payment.

If this is not the case, the delivery time will be extended accordingly. This is not valid if the supplier is responsible for the delay.

- 3.2. Compliance with delivery schedules is subject to the supplier receiving its own deliveries correctly and promptly. We shall inform the purchaser about any possible delay as soon as possible.

3.3. The term of delivery is complied with if the item of delivery has left our premises by the time the period expires or the purchaser has been notified that the good is ready for dispatch. Partial deliveries are permitted as far as this is reasonable for the purchaser.

3.4. The delivery period shall be extended to an appropriate extent in the event of force majeure, industrial disputes or other events beyond our control. This shall likewise apply in the event that such circumstances afflict our subcontractors. We shall not be responsible for such circumstances even if they occur during an already existing delay.

If the impossibility or incapacity arises during default of acceptance or if the purchaser is solely or predominantly responsible for these circumstances, then the purchaser remains liable for consideration.

3.5. A subsequent amendment to a confirmed order by the purchaser interrupts the period of delivery with the consequence that the deadline starts anew after we have confirmed the amendment in writing.

3.6. The delivery time can only be respected if the customer fulfils his obligations resulting from the contract.

3.7. If the purchaser sets us a reasonable deadline for performance after the due date, and if this period of time is exceeded, the purchaser has the right to withdraw the contract within the scope of legal regulations.

4. Incoterms®

All deliveries are subject to the most recent Incoterms®

Unless no incoterm has been specifically agreed, the term ex works (EXW) is valid. This shall also apply in cases where we deliver partially or have undertaken other performances, as shipping cost or installation.

5. Reservation of proprietary

5.1. We shall retain ownership of the delivery item only if all payments are effected. All partial deliveries shall be considered being a coherent delivery transaction. In cases of current accounts the retained property shall be regarded as security for our outstanding balance claim.

5.2. The purchaser shall neither pledge nor transfer the delivery object as collateral security. In the case of pledges and seizure or other orders by third parties, he has to inform us without any delay.

5.3. If the purchaser combines the delivery item in order to form an integrative object, it is agreed that the purchaser shall assign co-ownership to us pro rata within the meaning of Section 947 (1) German Civil Code (BGB) and that he holds the item in safe custody for us. If the other item is considered to be the main item, it is agreed that the purchaser shall assign us co-ownership to the extent the main item belongs to him. Our rights in items delivered by us, which not become an essential part of an object are not affected by this regulation.

In case the purchaser sells the delivered good according to the terms of the contract, by now he assigns to us all claims against his buyers or the third purchaser deriving including all subsidiary claims until complete repayment of all these claims and liabilities. The purchaser shall be entitled to enforce the aforementioned claims even after they have been assigned.

For well-justified reasons as default of payment, cessation of payment, or if there is a notable deterioration in the financial situation, the purchaser is obliged to inform us if there have been receivables assigned to third party purchasers, if requested to do so by us. He is further obliged to provide us with all information and documents necessary for the collection of the claims and he shall notify the corresponding debtors of the assignment as well.

The supplier shall release the securities to which he is entitled insofar as the value of the securities exceeds the secured accounts receivable by more than 20 %.

5.4. The supplier's request for the opening of insolvency proceedings entitles us to rescind the contract and to demand the immediate return of the delivery item.

5.5. If the customer acts in a way contrary to the contractual obligations, in particular, in the event of a default in payment, we shall be entitled to take back the delivery item after issuing a reminder and the purchaser is obliged to return it. The assertion of retention of title and the seizure by way of execution of the delivered items by us are not deemed to be a cancellation of the contract.

6. Transfer of risk

6.1. The risks shall be transferred to the purchaser at the latest when the delivery is dispatched, also when partial deliveries are made or we have undertaken other performances as for example carriage paid delivery, installation or assembly.

6.2. If dispatch is delayed due to circumstances beyond our control, risk shall pass to the purchaser prior to dispatch following notification that the goods are ready.

6.3. We are entitled to insure the delivered item at the purchaser's expense against theft, fire and water damage, and other damage if the purchaser has not demonstrably taken out an appropriate insurance policy himself.

6.4. Irregularities resulting from the dispatch are to be notified to the supplier in writing immediately after receipt of the goods.

7. Claim for defects

For material defects and defects of title of the delivery, we perform warranty, with the exclusion of any further claims except for section 9 - as follows:

7.1. Material defects

7.1.1. All parts that prove to be defective due to circumstances prior to the transfer of risk shall be repaired or replaced free of charge at our discretion. We are to be informed immediately in writing when notifying such defects.

7.1.2. The purchaser is obliged to provide us with the time necessary for all repairs and delivery of replacement parts; otherwise we shall be released from the liability for the consequences.

7.1.3. If the defect is only of minor nature, the purchaser shall only be entitled to reduce the purchase price. In all other cases, this right shall be excluded.

7.1.4. No guarantee shall be given for the following cases, in particular: inappropriate or inexperienced use, wrong assembly or wrong commencement of operations by the purchaser or a third party, natural wear and tear, wrong or negligent handling, improper maintenance, the use of unsuitable production materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences, to the extent that the same cannot be ascribed to us. If the client or a third party inexpertly carries out repairs, we shall not be responsible for the consequences arising from the same. The same shall apply to changes made to the delivery item without our prior permission.

7.1.5. The precondition for our assumption of liability is the purchaser's fulfilment of all contractual obligations, particularly the agreed conditions of payment.

7.1.6. Parts which are subject to a complaint shall be returned to our premises only at our request, with reasonable costs for the return being borne by the purchaser. Replaced parts shall become our property.

7.1.7. Our liability for products of sub- or other suppliers is limited to the cession of claims of these suppliers, which we are legally entitled to.

7.1.8. When delivering individual parts, we shall only be liable for performance according to the drawing.

7.2. Defects of title

If the use of the delivery item leads to the breach of industrial property rights or copyrights nationally, we shall at our costs provide the purchaser with the right to continue to use the goods or shall modify the goods in a manner that is reasonable to the extent that the infringement of rights no longer exists. If this is not possible at commercially reasonable conditions or in a reasonable period, both, the purchaser and we, are entitled to withdraw from the contract.

Our warranty for defects of title is valid only if:

- a. the purchaser immediately informs us of asserted violations of property rights or copyrights
- b. all defense measures including out-of-court settlements are reserved to us
- c. the legal defect is not based on an instruction made by the purchaser and
- d. the infringement of rights was not caused by the fact that the customer modified or utilised the delivery item in an unauthorized manner or in a manner that is contrary to the accordance of contract.

8. The purchaser's right to withdraw from the contract

8.1. The purchaser shall be entitled to rescind the contract if complete performance of the order becomes completely impossible for us, or if we are in default and if we have let expire a reasonable deadline set by the purchaser, combined with threat of refusal, without results.

8.2. In the case of a defect arising caused by us, the purchaser further has the right to rescind the contract if we allow a reasonable period of grace given to it for subsequent performance to expire without rectifying the defect or supplying a replacement.

9. Warranty for other claims

Apart from the claims stated in Sections 8 and 9, the purchaser shall have no claims for damages or other rights arising from any disadvantages associated with the delivery contract or delivery item, against us, our legal representative and auxiliary person, regardless of the legal grounds on which the claims base. In particular, all further claims by the purchaser shall be excluded, those for termination or price reduction, for compensation for damages of any type, including for such damage caused to items not coherent to the supplied item, notably out of a positive violation of contractual duty, from breach of duties during contract negotiations or contract formation and unpermitted actions.

10. Prescription

All customer's claims - on whatever legal grounds - shall be prescribed within one year upon delivery ex works. For damage claims under Section 9, the legal periods apply.

11. Software usage

If software is included in the scope of delivery, the purchaser shall be granted a non-exclusive, non-transferable right of use of the software delivered, including the accompanying documentation. It will be provided for use with the relevant delivery item. The use of the software on more than one system is prohibited. The purchaser may copy, edit, translate the software or convert the object code into the source code only in the legally permissible scope (§§ 69 a ff. UrhG). The purchaser undertakes not to remove any manufacturer's details – particularly references to copyright - or to change such details without our prior expressly given consent. All other rights to the software and the documentation including copies thereof shall remain with us respectively with the software supplier.

12. Rights of use to construction drawings or data

Also after provision of construction drawings or construction data, the purchaser shall only use the results of our work for the agreed type of use and the agreed purpose and within the agreed scope. The purchaser acquires the rights of use in the scope described above by payment for the full invoice amount. Any other rights of use remain with us exclusively. Any forwarding of the construction drawings, data and rights to third parties is permitted with our consent only.

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

1. Place of performance for both parties is at the place of business of our headquarters.

2. Place of jurisdiction is the court local to us. We shall also have the right to lodge a claim at the purchaser's headquarters.

3. For all legal relationships arising for the parties and their assignees from a delivery contract and eventual secondary business, the laws of the Federal Republic of Germany will exclusively apply under exclusion of the UN Convention of Contracts for the International Sale of Goods.

4. If one of the provisions of these Terms and Conditions and of additional agreements reached, should be or become ineffective, this shall not affect the validity of the contract in other respects. The contractual partners shall substitute the invalid provision by a legally effective provision, which comes closest to the meaning and purpose of the one, which has become invalid.

Valid from 01.01.2014