

General Terms of Contract of NABU-Oberflächentechnik GmbH – valid as of 1 January 2023

§ 1 General - Scope of Application

- (1) Our General Terms of Contract (GTC) shall apply exclusively; we shall not recognize any conditions of the Customer's which are contrary to or deviate from our GTC, unless we had explicitly agreed to their being valid. Our GTC shall also apply if we perform the delivery to the Customer without reservations, being aware of any conditions of sale of the Customer which are contrary to or deviate from our GTC.
- (2) All agreements which are made between us and the Customer regarding the execution of this Contract have been stipulated in this Contract in writing.
- (3) Our GTC shall only apply for entrepreneurs within the meaning of § 310 para. 1 BGB (German Civil Code).

§ 2 Offers – quotation documents

- (1) Our offers are subject to confirmation.
- (2) If the order is qualified as an offer pursuant to § 145 BGB (German Commercial Code), we shall be entitled to accept it within 2 weeks.
- (3) We reserve the right of ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents as are identified as „confidential“. The Customer requires our express written consent before disclosing them to third parties.

§ 3 Prices - Terms of payment

- (1) Unless otherwise specified in the order confirmation, our prices shall be applicable in accordance with our respective valid price list (calculation of services) as well as „ex works“, excluding packaging which shall be invoiced separately.
- (2) The legal value-added tax is not included in our prices; it is shown separately in the invoice to the amount provided by law at the date of invoicing.
- (3) Deduction of discount shall only be admissible if agreed in writing.
- (4) If the order confirmation does not contain anything to the contrary, the purchase price net (without deduction) must be paid within 30 days as of the date of invoice. The statutory regulations governing the consequences of default in payment shall apply.
- (5) The Customer shall only be entitled to set-off if his/her counterclaims have been determined, are uncontested or have been acknowledged by us with legal effect. Moreover, he/she shall be entitled to exercise his/her right of retention to the extent that his/her counterclaim is based on the same contractual relationship.

§ 4 Delivery Period

- (1) The commencement of the delivery period indicated by us is subject to the previous clarification of all technical issues.
- (2) We shall only be required to comply with our delivery obligation if the Customer has performed his/her obligations in a timely and orderly fashion. We reserve the defense of non-fulfilment of the contract.
- (3) If the Customer gets into default in acceptance or violates culpably any other obligations to cooperate, we shall be entitled to require reimbursement of the damage caused to us to this extent, including any possible additional expenses. Further claims or rights shall remain reserved.
- (4) To the extent that the prerequisites specified under para. (3) are fulfilled, the risk of accidental perishing or accidental deterioration of the item purchased passes to the Customer at the time when the latter gets into acceptance default or debtor's default.
- (5) We shall be liable according to the legal provisions as far as the Purchase Contract on which the transaction is based is a firm deal within the meaning of § 286 para. 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). We shall also be held liable according to the legal provisions, to the effect that the Customer, following a default of delivery for which we are responsible, is entitled to assert that his/her interest in the further performance of the contract has ceased.
- (6) We shall further be liable according to the legal provisions as far as the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault by one of our agents or persons employed in the performance of our obligations shall be imputed to us. If the default in delivery is not based on a grossly negligent breach of contract for which we are responsible, our liability to pay damages shall be limited to the predictable damage which will typically occur.
- (7) We shall also be held liable according to the legal provisions to the effect that the delay in delivery for which we are responsible is based on culpable breach of an essential contractual obligation; however, in this case, liability for damage shall be limited to the predictable damage which typically occurs.
- (8) Further legal claims and rights of the Customer shall remain reserved.

§ 5 Transfer of risk – Costs of packaging

- (1) Unless the order confirmation contains anything to the contrary, delivery shall be agreed as „ex works“.
- (2) Separate agreements shall apply to taking back of packaging material.
- (3) The delivery shall be covered by a transport insurance; the Customer shall bear the costs incurred to this extent, unless delivery „franco domicile“ has been agreed.

§ 6 Liability for defects

- (1) The Customer's claims based on defects shall be based on his/her having correctly fulfilled his/her obligations regarding investigation and complaint pursuant to § 377 HGB (German Commercial Code).
- (2) As far as the item purchased shows a defect, the Customer shall be entitled at his/her choice to either supplementary performance in terms of correction of the defect or to delivery of a new replacement item free of defect. In case of correction of the defect or replacement, we shall be obligated, in terms of supplementary performance, to bear all expenses required to eliminate the defect, especially transport, traveling expenses, labor and material costs, as far as these are not increased due to the fact that the item purchased has been taken to a place other than the place of fulfilment.
- (3) Should supplementary performance fail, the Customer shall be entitled at his/her choice to demand rescission of the contract or reduction of the purchase price.
- (4) The Customer shall be entitled to claims based on § 439 para. 3 BGB (German Civil Code) insofar as the Customer has demonstrably established the specific item being free from defects in a suitable test procedure prior to the respective installation.
- (5) We shall be liable according to the legal provisions if the Customer asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence on the part of our agents or persons employed in the performance of our obligations. To the extent that we cannot be blamed for intentional breach of contract, the liability for indemnification shall be limited to the foreseeable damage which typically occurs.
- (6) We shall be liable according to the legal provisions, to the extent that we culpably infringe on an essential contractual obligation; however, in this case, liability for damages shall also be limited to the foreseeable damage which typically occurs.
- (7) To the extent that the Customer is otherwise entitled to claim compensation for damage instead of performance due to a negligent breach of duty, our liability shall be limited to compensation for the foreseeable damage which typically occurs.
- (8) This shall not affect liability for damage caused culpably on account of injury to life, body or health of a person; this shall also apply in case of mandatory liability in accordance with the product liability law.
- (9) Liability shall be excluded unless otherwise specified above.
- (10) The period of prescription for claims based on defects amounts to 12 months, calculated as of the transfer of risk. This shall not apply in the case of the sale of an object which is usually used for a building and which has caused the respective defect.
- (11) This shall not affect the period of prescription in case of delivery recourse in acc. with §§ 478, 479 BGB (German Civil Code), which shall amount to five years calculated as of the date of delivery of the defective item.

§ 7 Overall liability

- (1) Any liability exceeding the damages according to § 6 - irrespective of the legal nature of the claim asserted - shall be excluded. This shall apply in particular to claims for compensation arising from negligence at the time of entering into the contract, other breaches of obligations or criminal claims for compensation for material damages acc. to § 823 BGB.
- (2) The limitation acc. to para. (1) shall also apply to the extent that the Customer requests, instead of replacement of the damage, replacement of useless expense instead of the performance.
- (3) As far as liability for damages towards us is excluded or restricted, this shall also apply regarding the personal liability for damages of our employees, staff, personnel, representatives/agents and persons employed in the performance of our obligations.

§ 8 Securing the reservation of title

- (1) We reserve the title to the item purchased pending receipt of all payments resulting from the business relationship with the Customer. If the Customer acts contrary to the terms of the contract, especially in case of default in payment, we shall be entitled to take back the item purchased. Our taking back the item purchased constitutes rescission of the contract. After taking back the item purchased, we are entitled to utilize it; the proceeds from utilization shall be settled against the Customer's liabilities, less appropriate costs of utilization.
- (2) The Customer shall be obligated to treat the item purchased carefully; he/she shall especially be required to provide sufficient insurance cover for its reinstatement value at his/her own costs against damage due to fire, water and theft. Should maintenance and inspection work be required, the Customer must have it performed in good time at his/her own costs.
- (3) In case of seizure or other third-party intervention, the Customer shall inform us immediately in writing, so as to enable us to take action in acc. with § 771 ZPO (German Code of Civil Procedure). To the extent that the third party is not able to reimburse us for the legal and out-of-court fees of an action in acc. with § 771 ZPO to us, the Customer shall be liable towards us for the default occurred.
- (4) The Customer shall be entitled to resell the item purchased within his/her ordinary business dealings; he/she shall, however, assign to us as of now all claims to the extent of the final invoice amount (VAT not included) of our claim which arise to him/her from the resale towards his/her purchasers or third parties, independently of the item purchased having been sold without or after having been subject to further processing. The Customer shall remain entitled to collect this claim even after such assignment. This shall not affect our right to collect the claim ourselves. However, we undertake not to collect the claim as long as the Customer meets his/her payment obligations from the collected proceeds, does not get into default in payment and especially if no application exists to open winding-up or insolvency proceedings, or bankruptcy. Failing this, we shall be entitled to demand that the Customer notifies us about the assigned claims and the appropriate debtors, makes all the indications required for collection, delivers the required documents and informs the debtors (third parties) about the assignment.
- (5) Processing or transformation of the item purchased by the Customer shall be performed for our account. If our item purchased is processed together with other items which are not our property, we shall acquire co-ownership of the new item on a pro-rata basis of the value of the item purchased (final invoice price incl. value-added tax) to the other processed items at the time of processing. The item created by transformation shall be subject, in all the other respects, to the same stipulations as the reserved, delivered item purchased.
- (6) If our purchased item is inseparably compounded with other items which are not our property, we shall acquire the co-ownership of the new item on a pro-rata basis of the value of the purchased item (final invoice price incl. value-added tax) to the other compounded items at the time of compounding. If compounding is effected in a way that the Customer's item shall be considered as the main item, it shall be considered as agreed that the Customer assigns to us co-ownership on a pro-rata basis. The Customer shall preserve sole ownership or co-ownership thus created for us.
- (7) The Customer shall also assign to us the claims for securing our claims towards himself/herself which arise through the connection of the item purchased with a plot of land against a third party.
- (8) We undertake to release the securities to which we are entitled at the Customer's request to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; selection of the securities to be released is our obligation.

§ 9 Services under a contract for work and services

- (1) If and to the extent that we provide services to our Customer under a contract for work and services, the following paragraphs 2 to 6 shall apply in addition to the other provisions of these GTC. In the event of contradictions, the following paragraphs 2 to 6 shall take precedence.
- (2) Our services under a contract for work and services shall be accepted by the Customer without delay in the absence of any material defects preventing acceptance.
- (3) If the Customer believes that the work is defective, he/she shall notify us thereof at least in text form after immediately inspecting the work for defects and immediately notifying us thereof. With regard to defects that are not communicated immediately or in the correct form, the Customer shall be excluded from his/her defect-related rights.
- (4) Acceptance of the work shall be deemed to have taken place if the Customer, - after acceptance having been requested by us, does not immediately explain the reasons for his/her refusal of acceptance at least in text form or - puts the work into operation or uses it for production.
- (5) The work shall only be considered as materially defective if it does not comply with the agreed quality.
- (6) The limitation period for services under a contract for work and services shall be 1 year from acceptance or unjustified refusal of acceptance.

§ 10 Legal venue – Place of fulfilment

- (1) To the extent that the Customer is a merchant, our registered offices shall be legal venue; we shall however also be entitled to sue the Customer before the court at his/her place of residence.
- (2) The law of the Federal Republic of Germany shall apply, application of the Convention on Contracts relating to the Uniform Law on the International Sale of Goods (CISG) shall be excluded.
- (3) To the extent that nothing to the contrary results from the order confirmation, our registered offices shall be the place of performance.

The supplies and services (performance of contract) shall be subject to the proviso that there are no obstacles to the performance under national or international regulations, in particular export control regulations as well as embargos or other restrictions. The Parties to the contract undertake to provide all information and documentation required for export/transfer/import. Delays due to export inspections or approval procedures shall override deadlines and delivery periods. If necessary approvals are not granted, the contract shall be deemed not to have been concluded with regard to the parts concerned; claims for damages to this extent and on account of the aforementioned deadline(s) being exceeded shall be excluded.

By accepting our products and services, the Customer warrants that all European and national, and possibly also US-American export regulations are complied with. This applies in particular to deliveries to sensitive countries of purchasers or end-users. All embargoes must be strictly observed. The sanctions lists must be checked precisely and complied with. Upon request, our Customers shall provide us with evidence that the sanctions lists have been checked via suitable software programs.