

**General conditions of delivery Niederwieser GmbH**

**I. Validity**

1. All supplies, services and offers of **Niederwieser GmbH** (hereinafter "**NW**") will be governed solely by these general terms and conditions of delivery (hereinafter "**GTC**") and the applicable written sales agreement entered into between NW and its customer (hereinafter "**Client**"). The GTC shall continue to apply to all future deliveries, services or offers made by NW to the Client, even if not explicitly repeated or mentioned in future sales agreements.
2. General terms and conditions of Clients or third parties shall not apply, even if NW does not expressly contradict their validity individually. Any reference by NW to correspondence containing or making reference to general terms and conditions of the Client or any third party, shall not be deemed as NW's consent to the applicability of those general terms and conditions.

**II. Offer and Conclusion of Contract**

1. All offers of NW are non-binding in nature and are subject to alteration unless explicitly provided otherwise or where they state a special term of acceptance. Clients' offers shall not be binding on NW until accepted by NW in writing. NW may accept orders or commissions from Clients within fourteen days of receipt.
2. Any sales agreement between NW and the Client must be in writing. The written sales agreement together with the GTC shall constitute the entire agreement between NW and the Client with respect to the subject matter of the sales agreement and shall supersede any prior agreement, understanding or undertaking between NW and the Client, whether in writing or oral, unless explicitly stated otherwise in the sales agreement.
3. Amendments and modifications of the sales agreement and/or the GTC shall only be effective, if made in written form, and making explicit reference to the relevant sales agreement and/or stipulation of the GTC. Except for managing directors and proxy holders no employee of NW is entitled to make changes to any agreement so made between NW and the Client. To comply with this written form requirement, transfer via fax is sufficient. Other telecommunication methods – including e-mail – are not sufficient.
4. Any information provided by NW with regard to the subject matter of delivery or services (e. g. weight, measurements, practical and tolerance values, technical specifications etc.) are approximated value only and shall not be binding, unless exact conformity is required for the contractually designated purpose. Any such information provided by NW shall not amount to a warranty (but be of descriptive or indicative nature with regard to the subject matter of delivery or services only. At any time NW is entitled to implement changes customary in trade or required by applicable laws as well as technical ameliorations to the extent that any such change does not restrain the usability of the subject matter of delivery or services for the contractually designated purpose.

**III. Delivery**

1. Delivery is made ex works NW manufacturing facility in Sulzberg (Niederwieser GmbH, Gewerbepark 9, D-87477 Sulzberg, Germany), unless explicitly agreed otherwise.
2. NW shall not be liable for non-performance or delay, where such non-performance or delay is caused by circumstances beyond the control of NW, whether local or abroad, or any other circumstances not foreseeable at the time of conclusion of the relevant sales agreement, despite having taken all due care (force majeure). In cases of an force majeure event NW shall be entitled to limit or to stop its performance for the duration of such event or terminate the agreement with immediate effect for good cause, if performance would not be possible or only possible under aggravated or economically unreasonable conditions. In case the force majeure event is only temporary, delivery and performance dates shall be prolonged for the duration of such event plus a reasonable start-up period following any such event. If the Client cannot be reasonably expected to accept the delay, the Client can terminate the agreement by giving a written notice to NW.
3. Force majeure shall mean events such as war or warlike conditions and their effect, riots, sabotage, interruption of operation, strikes, statutory or administrative measures, whether legal or illegal, obstruction or delay of transport, interruption in supply of raw materials, intermediate goods and end products, particularly in oil-producing countries, as well as difficulties in procuring necessary permits or administrative measures from authorities, non-delivery or delay in deliveries from suppliers, changes in output due to market-technical factors, if this would make delivery more difficult or impossible.
4. If any of the circumstances mentioned in section III paragraph 3 of the GTC results in increased costs for material or procurement, NW is entitled to increase its purchase prices accordingly. This shall also apply where NW and the Client agreed on fixed prices. If the Client refuses the purchase price increase or does not respond without undue delay, NW may terminate the agreement with immediate effect.
5. Any deadlines and delivery dates are not binding unless explicitly agreed otherwise or approved by NW. Disruptions in the production at NW's facilities or with third parties, upon which manufacturing and transportation are significantly dependent, shall release NW from its obligation to comply with any deadlines without compensation, to the extent that a replacement is unavailable on time or only available at unreasonable costs. In case NW and the Client agreed that goods shall be shipped to the Client, deadlines and delivery dates shall refer to the handing over of the goods to the forwarding agent/carrier or to any other third party commissioned with the shipment.
6. Without prejudice to its rights resulting from Client's delay, NW may request the extension of deadlines or postponement of delivery and service dates by a period of time which corresponds to the period of time during which the Client failed to meet its contractual obligations vis-à-vis NW.
7. In case additional or higher charges (e. g. customs duties, taxes, etc.) are incurred until delivery of the goods takes place, NW is entitled to adjust the purchase prices accordingly. This also applies to an increase of any other costs included in the purchase prices (e. g. freight costs etc.).

8. NW will deliver the full quantity ordered by the Client. The Client may not reject delivery in case of a surplus delivery or short delivery, where the deviation from the agreed quantity does not exceed 10 per cent of the agreed and ordered quantity. .
9. Quantity deviations due to palletising are possible.
10. In case of delay or non-performance, NW shall only be obliged to pay damages in accordance with section VIII of the GTC.

#### **IV. Place of performance, dispatch, packaging, passage of risks, acceptance**

1. Place of performance for all contractual obligations arising out of or in connection with the sales agreement shall be Sulzberg, Germany, unless otherwise agreed.
2. Type of dispatch and packaging are subject to the best judgement of NW.
3. Risk of loss passes at the latest with handover of the goods (whereby the beginning of loading operation is significant) to the forwarding agent, carrier, or any other third party charged with the shipping of the goods to the Client. This also applies for partial deliveries (e. g. dispatch or installation).
4. NW shall take out insurance for the goods against theft, breakage, transportation, fire and water damages or other risks only upon express request of the Client and only for the Client's account.

#### **V. Warranty**

1. The warranty period shall be one year from the day of delivery. Notwithstanding the aforesaid, the warranty period for peel and antifog products shall be six months from the day of delivery.
2. NW warrants that goods correspond with the written agreed specifications.
3. The Client is obliged to examine the goods without undue delay upon receipt – at least on a sample test basis – to determine whether the goods are free from defects and suitable for the contractually designated purpose.
4. The goods shall be deemed approved by the Client, if NW does not receive a written notice with regard to visible defects or any other defects, which would have become visible upon due examination performed without undue delay. Notice of defect must be made not later than 14 working days after receipt of goods or otherwise within 7 working days after discovery of such defect or at any earlier stage at normal, at which the defect has become evident for the Client during normal usage of the goods; section II paragraph 3 of the GTC shall apply accordingly. Upon NW's request the Client is obliged to send back the defective goods to NW on its own costs. In case the goods are defective NW will reimburse the Client the shipping costs incurred, however, not more than the most economic shipping route; this shall not apply, if goods have to be shipped from a place other than intended for utilisation. In case the Client does comply with his examination and reporting duties, NW's liability under the sales agreement and this GTC shall be waived.
5. In case of material defects NW is obliged either to offer improvement or replacement delivery within a reasonable period of time; the choice between improvement and replacement delivery shall be with NW solely. In case NW fails to remedy the defect, i.e. in case of impossibility, unacceptability, refusal or unreasonable delay of remedy, the Client may terminate the agreement or ask for an appropriate reduction of the purchase price.
6. If any defect is caused by NW's fault, the Client may claim damages in accordance with section VIII of the GTC.
7. No warranty shall apply, if the Client without prior NW's consent changes or modifies the goods or commissions any third party to change or modify the goods, thereby making remedy impossible or unduly burdensome. In any case the Client shall bear all additional costs of remedy originating from any such change or modification of the goods.

#### **VI. Retention of Title**

1. The retention of title to the goods agreed between NW and the Client hereinafter serves as security for all current and future claims of NW against the Client resulting from the business relationship between the parties (including any netted claims resulting from current account with regard to this business relationship).
2. All goods delivered to the Client remain the property of NW, until all secured claims have been paid in full.
3. The Client is obliged to store the goods free of charge on behalf of NW.
4. The Client is entitled to process and sell the goods in due course of business unless and event of default as defined in section VI paragraph 9 of the GTC has occurred. The Client may not pledge or assign the goods as security to third parties.
5. If the goods are processed by the Client, NW and the Client agree that the processing is made on behalf of and for the account of NW being the manufacturer and that NW shall directly acquire title to the newly created goods or - if the processing involves material of different title holders or the value of the goods subject to the retention of title exceeds that of the goods delivered to the Client - co-ownership. In case NW should not become the owner or co-owner of the newly created goods, for whatever reasons, the Client hereby transfers its future ownership or proportionate co-ownership in the newly created goods to NW as security. If the goods are combined with other items to create another single article or inseparably commingled and if one of the other items is considered to be the main part, NW hereby assigns - as far as NW is the owner of the main item - to the Client its co-ownership in the single item proportionate (cf. sentence 1).
6. In case of on-sale of the goods, the Client hereby assigns its claims against its customers by way of security - or if NW has a coownership in the goods proportionate in accordance with the share of co-ownership - to NW. The same applies to any other claims taking the place of the goods or arising in regard to the goods, e.g. insurance claims or claims in tort due to loss of or damage to the

goods. NW hereby authorises the Client to enforce arisen claims in his own name; NW may revoke the authorisation in case of default (section VI paragraph 9 of the GTC) of the Client.

7. In case of execution, including by way of pledge, by third parties, the Client is obliged to inform the third party about NW's title to the goods without undue delay and to notify NW thereof so as to enable NW to assert its property rights. The Client shall be liable to NW for any expenses in connection with the enforcement of its property right, if the third party is unable to reimburse NW.
8. Upon request NW will release the goods or any goods taking their place or claims at his own discretion, to the extent that their value exceeds the value of the secured claims by more than 50%.
9. In case NW terminates the sales agreement due to breach of contract by the Client, particularly because of delayed payment (default), NW is entitled to request return of the goods.

## **VII. Prices, Payment Terms**

1. The purchase prices are valid for the scope of supply and performance specified in the order confirmation. Any additional and extra services will be charged separately. Prices are quoted in Euro ex works NW manufacturing facility in Sulzberg plus packaging, VAT and in case of export delivery plus customs charges for export deliveries, duties and other official fees.
2. Where agreed purchase prices are based on list prices of NW and where delivery takes place more than two months after conclusion of the sales agreement, the list prices at the time of delivery shall apply (less any agreed discount).
3. Invoice (net price plus VAT) will be issued on the day of delivery or partial delivery. Due date of payment shall be subject to the conditions agreed in the offer and the order confirmation. Payment is deemed to be made on time, if funds are credited to the account specified by NW by the respective due date. Presentation of bills of exchange requires a prior written approval of NW. Payment by bills of exchange is made when the bill of exchange is honoured. If the Client fails to pay the purchase price by the due date, the Client shall be obliged to pay default interest on the overdue amount in the amount of 5 per cent p.a. as from due date; NW's right to claim higher interest and further losses due to delayed payment remains unaffected.
4. Acceptance of cash payment or other means of payment is reserved to commissioners of NW showing a power of collection.
5. The right of set-off and assertion of retention rights is – especially in case of complaints – excluded, unless such claim of the Client is undisputed by NW or has been upheld by a full and final judgment.
6. NW is entitled to request pre-payment of any outstanding delivery and services or provision of security, if following conclusion of the sales agreement NW learns of circumstances, which are able to materially reduce the creditworthiness of the Client and which endanger the payment of outstanding claims of NW by the Client.
7. In case an agreed payment deadline is exceeded, NW has the right to stop performance immediately.

## **VIII. Liability**

1. Liability of NW in damages, regardless of the legal nature of the underlying claim, including non-delivery, delay, default, defective or incorrect delivery, breach of contract or pre-contractual duties (*culpa in contrahendo*) unlawful act, to the extent that such claims are subject to fault is limited in accordance with this section VIII.
2. NW is not liable in case of negligence of its members, legal representatives, employees or other agents except in case of breach of a material contractual duty. Material contractual duties shall be the duty to deliver on time and the installation of the delivered goods essentially free of defects, as well as advisory, protective and custodial duties which shall enable the Client to use the goods in accordance with the contractually designated purpose or which shall protect life and health of the Client's staff or the Client's property from major damages.
3. To the extent NW is liable in damages in accordance with the foregoing paragraph 2, its liability is limited to damages foreseen or foreseeable when applying due diligence at the time of conclusion of the sales agreement. Indirect and consequential losses will only be replaced to the extent that such losses may typically occur in connection with the intended use of the goods.
4. In case of negligence (including the violation of material contractual duties), NW's liability for material defects and resulting consequential losses is limited to an amount of 2.5 Mio. EUR per case of damage.
5. The abovementioned exclusions and limitations of liability shall also apply the members, legal representatives, employees and other agents of NW.
6. To the extent that NW provides technical information to the Client or gives advices and where such information or advice is not part of its contractual obligations, such services are offered free of charge and excluded from any liability.
7. Aforementioned limitations do not apply in case of intent, with regard to warranted specifications or injury of life, limb or health or with regard to claims under the German Product Liability Code.

## **IX. Miscellaneous**

1. In case one of the provisions of the GTC is invalid, the remaining provisions shall remain unaffected. In such an event, the invalid provision shall be replaced by a valid provision which comes as close as possible to the invalid provision with regard to purpose and economic considerations.

2. In case of gaps in the sale agreement or the GTC, those lawful effective regulations shall apply, which the parties would have agreed upon taking into account the economic purposes of the sales agreement and of the GTC had they known the omission.
3. Place of jurisdiction for both parties is Kempten, if the Client is a merchant or meets other requirements according to sec. 38 paragraph 1 of the German Code of Civil Procedure. The GTC and any agreement concluded between the parties are solely subject to the substantive law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
4. Oral agreements deviating from the GTC require written confirmation of NW for their validity. This also applies to any amendments and changes of the GTC.
5. NW points out that data of the Client, needed for correspondence, will be processed with in accordance to the German Federal Data Protection Act.
6. An order confirmation is legally binding. If the Client does not raise objections in writing within eight days, the order confirmation will be considered as accepted.
7. If the Client terminates an order or an agreement, cancellation fees amounting to 10 per cent of the order volume will be charged. The Client is obliged to take over warehouse stock present at the date of cancellation of the order or the agreement.