

General Terms and Conditions of NPR of Europe GmbH

General Terms and Conditions of NPR of Europe GmbH (hereinafter referred to as “NE”), Siemensstr. 56, 70825 Korntal-Münchingen

Terms and Conditions of Sale and Delivery as at 07/2007

1. Scope

(1) The following conditions of sale apply for all Contracts concluded between NE and the Purchaser regarding the delivery of goods. They shall also apply to all future commercial relations even if they have not been expressly agreed. General terms and conditions of the purchaser do not apply to NE, even if this are not contradicted by NE.

(2) All agreements reached between NE and the purchaser in connection with the purchase contracts, are in the purchase contract, these conditions and the order confirmation put in writing by NE.

2. Offers and conclusion of the contract

(1) Offers on the part of NE are subject to change and non-binding, even for repeat orders, unless NE has expressly indicated this as binding in writing.

(2) If the order should qualify as an offer in accordance with § 145 of the BGB [German Civil Code] then NE shall be permitted to accept this within two weeks, through consignment of an order confirmation, or by sending the ordered goods to the purchaser within this time period.

(3) Dimensions, weights, figures, diagrams and other data relating to non-binding offers by NE remain the property of NE and are only approximately decisive, insofar as they have not been expressly indicated as binding by NE.

3. Prices, terms and conditions of payment

(1) If the agreed delivery time should exceed a period of four months from the conclusion of the Contract, or the delivery is delayed for more than four months from the conclusion of the Contract for reasons attributed to the purchaser alone or which come within his sphere of risk, then NE is entitled to charge the current price on the day of delivery. If the increase in price amounts to more than 5% of the named purchase price, then the purchaser is entitled to withdraw from the Contract. This right to withdraw does not apply if the purchaser fails to administrate it within a period of two weeks, beginning with the date of the notification of the new price.

(2) The prices apply “ex-warehouse” insofar as no deviating agreement with the purchaser has been made in addition to the VAT rate at the time of the invoicing. Packaging costs are not included in the price.

(3) Unless otherwise agreed in writing with the purchaser, the purchase price shall be payable by the purchaser immediately following the invoice date, without delay and following deductions. Payments made by the purchaser shall be credited first of all to their previous debts, irrespective of any deviating provisions. Where costs and interest have already arisen, we are entitled to credit a payment first to the costs, then to the interest and finally to the principal amount.

(4) If a cash deduction is agreed in writing, then no other payable claims can be made against the purchaser.

(5) The acceptance of exchanges or cheques shall only be completed on account; the cost of discounting and inclusion shall be borne by the purchaser. Following acceptance of the exchange, NE is entitled to return the exchange, in case acceptance is refused by the State Central Bank.

(6) If, following the order confirmation, NE should become aware of facts which raise reasonable doubt regarding the purchaser’s ability to meet financial obligations, NE is entitled to request the full payment or a corresponding security deposit prior to delivery, and also to withdraw from the Contract if the payment deadline is not adhered to. Besides a delay in payment as outlined above, corresponding information from a bank, credit agency or a company involved in commercial relations with the purchaser, referring in particular to the careful nature of a prudent businessman, may be considered as evidence of a significant decline in wealth. If delivery has already taken place, invoiced amounts shall be considered payable immediately, regardless of agreed payment conditions, and where appropriate on return of acceptances.

(7) Should the purchaser make a delayed payment, NE is entitled to request interest at 8% above the current basic interest rate of the European Central Bank (ECB) at the relevant point in time. NE reserves the right to demonstrate evidence of greater losses.

(8) The purchaser is only entitled to compensation if the counterclaims are found to be legally binding, recognised by NE or indisputable, even if notifications of defects or counterclaims are asserted. The Purchaser is only authorised to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

(9) At the refusal of the Purchaser to pay or where a payment deadline has not been met, NE is entitled to fully or partly withdraw from the Contract and request compensation for damages.

4. Delivery and service time; Force Majeure

(1) Delivery deadlines or periods which have not been expressly agreed as binding shall simply represent information that is without obligation.

(2) Part-deliveries are acceptable, insofar as the Purchaser is not put at an unreasonable disadvantage.

(3) NE reserves the right to claim 10% of any excess deliveries and short deliveries.

(4) If dispatch is delayed at the Purchaser’s request, NE shall store the respective items at the purchaser’s expense and risk.

(5) The delivery period may be extended in the case of Force Majeure, strike, blameless incapacity and adverse weather conditions during the period of delay.

5. Delay in Delivery

(1) Where NE is culpable of not adhering to an expressly agreed deadline or is delayed

for other reasons, the Purchaser shall arrange to guarantee NE a suitable grace period beginning from the first day of delay. Where this grace period has elapsed without delivery, the Purchaser is entitled to withdraw from the Contract.

(2) NE is liable according to legal requirements, insofar as the delay in delivery depends on an intentionally assigned or grossly negligent breach of contract. NE shall assign responsibility to its representatives or vicarious agents. If this should not be the case, liability for damages shall be limited to foreseeable damage considered typical for the contract.

According to loyalty and good faith, economic circumstances, type, scope and duration of the commercial relationship shall be carefully considered in favour of NE regarding the amount of compensation.

(3) If the delay in delivery represented by NE rests on the culpable breach of an significant contractual obligation, NE is liable according to legal provisions; whereby its liability is limited to foreseeable damage considered typical for the Contract.

(4) Further legal claims and rights of the Purchaser remain unaffected by a delay in delivery on the part of NE.

6. Transfer of risk, shipping and packaging, withdrawal

(1) Unless otherwise specified on the order confirmation, all deliveries are made “ex warehouse”. Shipment and dispatch shall not be insured; this is at the Purchaser’s own risk. This applies equally to return deliveries. NE endeavours to consider the interests of the Purchaser with respect to the type of shipping. Any additional costs which this may entail shall be borne by the Purchaser, even in the case of “free delivery” of agreed freight.

(2) If dispatch is delayed at the Purchaser’s request or through fault on the part of the latter, the Vendor shall store the respective items at the purchaser’s expense and risk. In this case, the advertisement of readiness for dispatch is equal to that of shipping.

(3) Transport packing and other convenience packaging shall not be withdrawn.

(4) A withdrawal of individual rings to be distributed in the aftermarket is excluded.

7. Guarantee, liability

(1) The Purchaser shall inspect the received goods for completeness, damage during transit, apparent defects, quality and its subsequent characteristics. The Purchaser shall notify NE immediately and in writing of any apparent defects within an acceptable period of the transaction. NE assumes no guarantee for rectifying apparent defects for which a claim is not immediately made in writing by the Purchaser.

(2) Provided that there is a defect evident in the goods for which NE may be held responsible, and provided a claim is made against it in due time by the Purchaser, NE shall, with the exclusion of the rights of the

Purchaser, withdraw from the Contract or reduce the purchase price in the interests of supplementary performance, unless NE is entitled to refusal of subsequent performance on legal grounds. The Purchaser shall guarantee to provide NE with an appropriate deadline for the rectification of each individual defect in the interests of subsequent performance.

(3) Subsequent performance can be implemented, according to the wishes of NE, either through rectification of the defect or the delivery of replacement goods. NE is entitled to refuse subsequent performance chosen by the Purchaser if it is associated with disproportionate costs. During subsequent performance, a reduction in the purchase price or withdrawal from the Contract are excluded by the Purchaser. Subsequent improvement is considered to have failed following the second unsuccessful attempt. Where subsequent performance has failed or where NE has refused it altogether, the Purchaser can, if he chooses, further decrease the purchase price (reduction) or declare his withdrawal from the Contract.

(4) In the case of subsequent performance, NE bears all necessary expenses for the purposes of rectifying defects, in particular transport and labour costs. This only applies insofar as the expenses do not increase because the delivery item was brought to a location other than the place of performance.

(5) Warranty claims made by the Purchaser are not deemed valid if the defect can be attributed to a breach of operating, maintenance or installation instructions, or inappropriate processing or use by the Purchaser or a third party.

(6) Claims made by the Purchaser for material defects shall be time-barred for 24 months following the transfer of risk, according to legal provisions.

(7) The Purchaser may only validate damages claims for the defect based on the following conditions if subsequent performance has failed or if NE refuses subsequent performance. The right of the Purchaser to assert additional damages claims regarding the following conditions remains unaffected.

(8) NE is only liable according to legal provisions insofar as damages claims which can be attributed to fraud, deliberate intent, or gross negligence by NE are asserted by the Purchaser. If no deliberate intent by NE to breach the terms of the Contract is apparent, liability is limited to foreseeable damage considered typical for the Contract. NE is furthermore liable according to legal provisions insofar as it culpably violates an essential contractual obligation. In this case, liability is limited to foreseeable damage considered typical for the Contract. Continual liability for damages not mentioned in the above provisions shall not be accepted irrespective of the legal nature of the asserted claim.

(9) Damage claims arising from culpable injury to life, limb or health, from the acquisition of warranties or on the grounds of the mandatory provisions of the Produkthaftungsgesetz [German Product Liability Act], remain unchanged by the preceding provisions.

(10) Insofar as liability for damages caused by NE is excluded or limited, this shall also apply to the personal liability of its

employees, representatives and vicarious agents.

8. Retention of title

(1) NE reserves ownership of the Goods up to receipt of all payments from commercial relations with the Purchaser.

(2) The Purchaser shall notify NE of all third party involvement immediately and in writing, in particular law enforcement procedures and other restrictions to ownership. The Purchaser shall replace all damages and costs for NE arising from a breach of this liability, using necessary intervention measures against the involvement of third parties.

(3) The Purchaser may not pledge or assign as security the items delivered hereunder. In the case of pledging, appropriation or other use by a third party, NE shall be notified immediately. Enforcement officers and third parties shall

(4) Should the Purchaser breach the terms of the Contract, notably in the case of a delay in payment, NE shall be entitled to request a reduction in the deadline. A previous withdrawal from the Contract is not required for a demand for reduction.

Any transport costs resulting from this shall be borne by the Purchaser.

(5) Should retention of title be asserted on the part of NE or a pledge implemented for the delivered items, this shall not be considered a withdrawal from the Contract.

(6) The Purchaser is entitled to redistribute the items for delivery as part of routine business activities. The Purchaser has already assigned all receivables arising from redistribution to the Purchaser and independent of whether or not the items for delivery were altered during redistribution, to NE, to the sum of the purchase price agreed between NE and the Purchaser and including VAT. The Purchaser is entitled to collect these receivables following transfer. NE undertakes not to collect the receivables provided that the Purchaser properly complies with his payment obligations and is not in arrears with payment. If this is indeed the case, NE can request the disclosure of all necessary information for collection.

(7) Processing of goods by the Purchaser shall always be undertaken for NE. If the goods are processed alongside other items not belonging to NE, NE shall acquire joint ownership of the new items in the ratio of the value of the delivered goods to the value of the other items at the time of processing.

9. Final provisions, applicable law

(1) Unless otherwise agreed, the place of business is the NE delivery location.

(2) If the Purchaser is a businessman, the place of jurisdiction is the court responsible for the NE place of business. However, NE is entitled to take action against the Purchaser at its general place of jurisdiction. The court of jurisdiction shall be the same if the Purchaser has no general domestic court of jurisdiction, relocates their place of residence or normal home abroad on conclusion of the Contract, or their place of residence or normal home is unknown at the time that the claim is made.

(3) The Purchaser is not entitled to assign claims from the purchase contract without the consent of NE.

(4) The relations between the contracting parties are governed exclusively by the law of the Federal Republic of Germany. The application of the United Nations Convention of 11/04/1980 on contracts for the international sale of goods (CISG) is excluded.

(5) If a regulation of these General Terms and Conditions of Payment is or becomes invalid or impractical, then this shall not affect the validity of the General Terms and Conditions of Delivery and Payment.