

General Contractual Conditions of noax Technologies AG

Our following contractual conditions shall apply to all our supplies and services to entrepreneurs.

§ 1 Conclusion of the contract, quality of the goods

Our offers are subject to change without notice, and not binding. Should an order confirmation be issued by us, the contract shall come into force upon receipt of the order confirmation by the customer.

The following are significant for the content of the contract, in the order specified: our written order confirmation, as well as these terms of delivery, the contractual agreements and our offer. No subsidiary oral agreements exist.

Any declarations concerning the quality and durability of the goods, with which we grant the customer additional rights, without prejudice to its statutory claims, shall only constitute a warranty concerning the quality and durability, pursuant to Sec. 443 German Civil Code, if we expressly term them a warranty. The contents of our product brochures are not binding details concerning the nature of the goods; the prices specified in the price lists are subject to change without notice.

§ 2 Delivery, passing of risk

Our deliveries shall be made ex works or from our warehouse. At the customer's request, we shall despatch the goods to the customer's premises or to an alternative location agreed with the customer. The shipping costs shall be borne by the customer. Partial deliveries shall be admissible in so far as they are acceptable to the customer.

The risk of accidental destruction or accidental damage to the goods shall pass to the customer at the time at which we have handed over the goods to a haulage contractor, freight forwarder or any other person or institution instructed to carry out the shipping, however no later than upon the goods leaving our factory or warehouse. Should the goods be ready for dispatch, and should shipping be delayed, for reasons which are not our fault, the risk shall pass to the customer upon receipt of the notification of dispatch. This shall also apply if "carriage paid" delivery has been agreed. We shall not be obliged to conclude transportation insurance unless we have expressly agreed this with the customer. In this case the insurance costs shall be borne by the customer.

§ 3 Delivery deadlines, hindrances to delivery

Adherence to the agreed delivery deadlines can only be required if the latter have been agreed between the parties as fixed dates, and have also been designated as such. In any event, adherence to delivery dates assumes that all documentation to be supplied by the customer, necessary approvals and clearances have been received in good time, especially of plans, as well as adherence to the agreed terms of payment and any other obligations on the part of the customer. Should these prerequisites not be fulfilled, not completely fulfilled, or not fulfilled in good time, the delivery deadlines shall be reasonably extended; this shall not apply if the delay is caused by our fault.

Cases of Acts of God (unforeseen circumstances and occurrences which are not our fault, which could not have been avoided with the due care of a competent trader, e.g. industrial action, war, fire, hindrances in transportation, lack of raw materials, official measures) shall, for their duration and within the scope of their effect, interrupt our delivery obligation, even if delivery is already delayed.

To the extent that we have concluded a congruent hedging transaction with our own supplier, delivery dates specified by us shall be subject to the reservation of timely and proper delivery to us.

§ 4 Rights of withdrawal

In cases of Acts of God and conclusion of a timely congruent hedging transaction, we shall be entitled to withdraw from the contract if we have informed the customer on the occurrence of the Act of God or on delivery not being made in good time or in proper form to us and reimburse the customer any payments made without delay.

§ 5 Prices and payments

Our prices shall apply net ex works, excluding packaging, freight, postage and transportation insurance.

In so far as we have undertaken to carry out additional services, besides the delivery of goods, e.g. the assembly, installation, connection, functional testing, putting into operation, beta testing and/or briefing of personnel, the customer shall, in addition to the agreed price for the goods, bear all necessary expenses for the additional services, such as, in particular, the labour costs in accordance with expenditure at the usual hourly rates, travelling expenses (travelling costs and costs of overnight stay), and costs for the transportation of the tools and personal luggage.

We reserve the right to alter our prices accordingly if, following conclusion of the contract, our costs of manufacture and supply are increased by circumstances which are beyond our control (e.g. increases in standard tariffs, increases in the prices of materials, tax increases, etc.) and we inform the customer on the increase in price in good time prior to delivery.

Our invoices are due for payment immediately after receipt by the customer. As a calendar term for payment pursuant to Sec. 286(2)(1) German Civil Code, the parties agree upon the obligation to make payment no later than 14 days after receipt of the invoice. In the event of the customer being in arrears with payment, we shall be entitled to arrears interest in the amount of 8 percentage points above the base rate. The customer may only offset payment with undisputed claims or those determined with legal validity, and only assert a right of retention on the basis of such claims. The assignment of any claim to which we are entitled, which does not consist of a monetary claim, shall require our consent for its legal validity.

§ 6 Scope of supply and services; obligation to co-operate with assembly

Our services shall be orientated towards the content of the agreed services. Our services do not include the delivery of technically programmed software unless we have expressly agreed the delivery of the software with the customer. The delivery of the software may be agreed together with the delivery of our goods, or separately. Any further and/or new developments of the software supplied do not belong to our supply and service obligations.

The customer shall ensure that all services and prior works to be carried out by it, including the provision of all aids and assistants agreed, are carried out in an orderly manner and in good time, before we provide supplies and services at the customer's premises or any other location. Should the customer not fulfil its obligations to co-operate, and should our supplies and services be delayed as a result, the customer shall bear the costs of the delay and any additional travel necessary on our part, as well as assembly personnel, in a reasonable scope. All costs of assembly and installation of the goods shall be borne by the customer.

In so far as we require acceptance of the delivery following manufacture, the customer is required to carry this out within two weeks. We shall draw up the acceptance certificate. Should the customer refrain from acceptance within the two-week period, it shall be deemed to have occurred. Acceptance shall also be deemed to have occurred if the delivery has been put into operation, if applicable following conclusion of an agreed trial run.

§ 7 Rights and obligations of the customer in the event of defects

The customer is required to examine the goods for defects without delay. The customer is required to inform us of any recognisable defects without delay, however no later than within 7 working days. The period for examination and notification shall begin upon delivery, at the latest upon conclusion of a trial run. The customer is required to inform us of any hidden defects without delay following their discovery. Should the customer fail to examine the goods and notify any defects without delay, the customer shall lose all rights arising in direct or indirect connection with the defect.

Should the goods be defective, the customer shall initially only be entitled to assert a right of subsequent fulfilment, unless subsequent fulfilment is unacceptable to the customer. The supplier shall have the option between subsequent improvement and subsequent replacement. Should the subsequent fulfilment fail twice, or should it be denied by us, the customer shall, at its option, be entitled to assert a right to a reasonable reduction in price or withdrawal. Should our expenditure be increased in the event of subsequent fulfilment because the goods have been brought to a different location from the head office of the customer or of the intended use, in particular in the case of export business, the customer shall compensate us for the increased expenditure. The restrictions on liability regulated in the following sections shall apply concerning any claim for compensation for damage.

Should only individual goods out of several be defective, or only individual parts of goods sold, any right of withdrawal on the part of the customer shall be restricted to the individual defective goods or the defective part. This shall not apply if the individual defective goods or the defective part cannot be separated from the remaining goods or parts without damage or restrictions in the functioning, or if this is unacceptable to the customer. The reasons for the impracticability are to be explained by the customer.

In so far as we specially manufacture our goods in accordance with the customer's individual requirements, the customer may only terminate the contract up to the completion of our goods for a significant reason. We do not make any guarantee concerning the correctness of cost estimates which were made the basis of the contract. In addition, Sec. 651 German Civil Code shall apply.

§ 8 Restriction of liability, exclusion of withdrawal in the case of certain infringements of obligations

We shall in any event have unlimited liability in accordance with the statutory conditions for any damage caused by us to life, the body and health, as well as in accordance with the Product Liability Act independently of fault. In the event of infringement of significant contractual obligations, we shall in principle be liable to an unlimited extent for damage in the case of intent or gross negligence; in the event of slight negligence, restricted to compensation for the foreseeable, typical contractual damage.

In all other cases any claims against us for compensation for damage, regardless of on what legal grounds, shall be excluded in so far as there is no contractual infringement by us, our legal representatives or our assistants, caused through intent or gross negligence. Our liability shall be limited, in the case of gross negligence, to contractually typical foreseeable damage. Any rights on the part of the customer to dissolve the contract due to contractual infringement which is not our fault, and does not consist of a defect in the goods, shall be excluded. To the extent that our liability is excluded or restricted in accordance with the foregoing paragraphs, this shall also apply to the liability of our assistants and vicarious agents.

§ 9 Reservation of ownership

An item supplied shall remain our sole property until full payment of the purchase price has been made. In the case of third parties laying claim to the retained goods, the customer shall point out our ownership and inform us without delay. In the event of payment arrears on the part of the customer, we shall be entitled to request the return of the retained goods, at the customer's expense, if we have withdrawn from the contract. All items supplied shall remain our sole property until fulfilment of all accounts receivable, including the respective outstanding balance claims arising from the business connection. Any pledging, agreement regarding transfer of ownership by way of security or any other realisation shall be prohibited, unless the acquisition is made precisely for the purpose of resale. In this case the customer shall be revocably entitled to re-sell the retained goods within the scope of the orderly course of business, in its own name, as long as it is not in arrears with its payment obligations towards us. In the case of processing or binding, we shall acquire co-ownership, in regard to which our share shall be determined in accordance with the invoice value (our delivery price, including VAT, without deduction of any cash discount); in so far as the customer, by operation of law, acquires sole ownership, it shall correspondingly assign to us a share in co-ownership and shall keep the items safe for us, free of charge. Any processing shall be carried out for us.

By way of precaution, the customer hereby already assigns us the accounts receivable in regard to the retained goods arising from the resale or on any other legal grounds (e.g. insurance, tortious acts), including all outstanding balance claims on a current account, in the amount of the invoice value. This shall also apply in the event that, in accordance with the foregoing restrictions, a resale was not admissible. We accept the assignment. Should we only have a share in co-ownership of the retained goods, the advance assignment shall be restricted to the percentage share of the claim corresponding to the percentage share of our co-ownership on the basis of the invoice value.

The customer shall be revocably entitled to collect the accounts receivable assigned to us in its own name and on our account. This collection authorisation may be revoked if the customer does not fulfil its payment obligations in an orderly manner. In the event of justified revocation, the customer or its legal successors or liquidators shall be required, upon request, to make known the assigned accounts receivable and the associated debtors, along with their addresses, provide all details necessary for collection, hand over the associated documentation and notify the debtors of the assignment without delay. We shall release the aforementioned securities at the customer's request, at our option, in so far as their realisable value effectively exceeds the secured claims by more than 10%. In the case of retained goods, the estimated value shall be deemed realisable and, in the case of accounts receivable assigned by way of precaution, the nominal value shall be taken, less a deduction of one third in each case. Should any third parties lay claim to the retained goods, the customer shall, in addition, without delay, file an action pursuant to Sec. 771 German Code on Civil Procedure as a voluntary representative action (so-called third party proceedings).

§ 10 Intellectual property rights and copyrights

We reserve our unrestricted ownership and our copyrights and intellectual property rights in all services provided or made available by us, in particular in programs drawn up by us, drawings and any other documentation. Should a contract with us not be implemented, the drawings and documentation and any other work already performed are to be returned without delay. The documentation and other work performed may only be made accessible to third parties with our consent.

§ 11 Statute of limitations

Any claims by the customer due to a defect in the goods shall become statute-barred in 2 years.

Any other contractual claims by the customer due to infringements of obligations shall become statute-barred in one year. In one year the claims arising from a warranty shall also become statute-barred if we have given a warranty and the warranty does not provide for anything else. Concerning any rights on the part of the customer to dissolve the contract due to an infringement of an obligation which is our fault, which does not consist of a defect, the statutory provisions regarding limitation of actions shall apply accordingly. Otherwise, the statutory provisions shall apply to the claims by the customer. Our claims against the customer shall likewise become statute-barred in accordance with the statutory provisions.

§ 12 Applicable law - place of fulfilment - place of jurisdiction

The contract shall exclusively be subject to German law. The place of fulfilment, also for payments by the customer, shall be Ebersberg. In so far as the customer is a trader, in accordance with the jurisdiction concerning the subject matter the County Court of Ebersberg or the District Court of Traunstein shall have exclusive local jurisdiction for all disputes arising, directly or indirectly, from the contractual relationship. We shall, however, also be entitled to sue the customer at its general place of jurisdiction. In the case of cross-border deliveries, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall, in accordance with the jurisdiction concerning the subject matter, be the County Court of Ebersberg or the District Court of Traunstein, Federal Republic of Germany (Article 17 EC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 23 Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters). We reserve the right to also appeal to any other court which has jurisdiction on the basis of the two aforementioned articles.

noax Technologies AG
Status 06/11