

# General Terms and Conditions (GTC) of Neowells GmbH – As of October 2021

## I. General Provisions

1. The scope of Deliveries or services (hereinafter referred to as "Deliveries") shall be determined by the written declarations of both parties. We (hereinafter referred to as "Supplier") shall not recognize any terms and conditions of the Purchaser that conflict with or deviate from our Terms and Conditions of delivery unless we agree to their validity in writing. These Terms and Conditions of delivery shall also apply if the Supplier carries out the delivery to the Purchaser without reservation in the knowledge of conflicting or deviating terms and conditions of the Purchaser.
2. The Supplier reserves its unrestricted property and copyright exploitation rights to cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents may only be made accessible to third parties with the Supplier's prior consent and, if the order is not placed with the Supplier, must be returned to the Supplier immediately upon request. Sentences 1 and 2 shall apply mutatis mutandis to Documents of the Purchaser; these may, however, be made accessible to such third parties to whom the Supplier has permissibly assigned Deliveries.
3. Partial Deliveries shall be permissible insofar as they are reasonable for the Purchaser.

## II. Prices and Terms of Payment

1. The prices are exclusive of the applicable statutory value-added tax.
2. If the Supplier has undertaken the planning, supervision or assessment on-site at the Purchaser's premises and unless otherwise agreed, the Purchaser shall bear, in addition to the agreed remuneration, all necessary ancillary costs such as travel expenses, costs for the transport of required tools and personal luggage as well as expenses.
3. Payment shall be effected free of charge to the Supplier's payment office. Unless otherwise stated in the order confirmation, the works contract or services contract, the price shall be due for payment net (without deduction) within 14 days from the invoice date. The statutory regulations concerning the consequences of default in payment shall apply.
4. If the Purchaser fails to meet its payment obligations under the contract, the Supplier shall be entitled to discontinue any further Deliveries – including from other orders. The Supplier's legal rights due to default remain unaffected.
5. The Purchaser may only offset such claims as are undisputed, we have acknowledged or have been finally determined by a court of law. Furthermore, it may only exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship. In the event of material defects, Art. VIII. 7 shall apply in addition.

## III. Retention of Title

1. The Supplier shall retain title to the delivery items until receipt of all payments under the delivery contract. In the event that the Purchaser acts in breach of contract, in particular in the event of default in payment, the Supplier shall be entitled to take back the delivery items. After taking back the delivery items, it shall be entitled to exploit them; the proceeds of exploitation shall be credited against the Purchaser's liabilities – less reasonable realization costs.
2. The Purchaser is obliged to treat the delivery items with care; in particular, it is obliged to adequately insure them at replacement value at its own expense against fire, water and theft damage. If maintenance and inspection work is required, the Purchaser must carry this out in good time at its own expense.
3. In the event of seizure or other interventions by third parties, the Purchaser shall notify the Supplier in writing without delay so that legal action can be taken in accordance with Section 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse the Supplier for the court and out-of-court costs of an action pursuant to Section 771 ZPO, the Purchaser shall be liable for the loss incurred by the Supplier.
4. The Purchaser shall be entitled to resell the delivery items in the ordinary course of business; however, the Purchaser hereby assigns to the Supplier all claims in the amount of the final invoice total (including VAT) accruing to the Purchaser against its customers or third parties on account of the resale, irrespective of whether the items of the Supplies have been resold without or after processing. The Purchaser shall remain authorized to collect this claim even after the assignment. This shall not affect the Supplier's right to collect the claim itself. However, the Supplier undertakes not to collect the claim as long as the Purchaser meets its payment obligations from the proceeds received, is not in default of payment and, in particular, no petition for the institution of composition or insolvency proceedings has been filed nor payments suspended. If this is the case, however, the Supplier may demand that the Purchaser informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant Documents and informs the debtors (third parties) of the assignment.
5. The processing or transformation of the delivery items by the Purchaser shall always be carried out to the benefit of the Supplier. If the delivery items are processed with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new item in the ratio of the value of the delivery items (final invoice amount, including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by processing as to the delivery items delivered under reservation.
6. If the delivery items are inseparably mixed with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new item in the ratio of the value of the delivery items (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Purchaser's item is to be regarded as the main item, it shall be deemed agreed that the Purchaser shall transfer co-ownership to the Supplier on a pro-rata basis. The Purchaser shall hold sole ownership or co-ownership thus created in safe custody for the Supplier.
7. The Purchaser also assigns to the Supplier the claims to secure the latter's claims against the Purchaser that arise against a third party resulting from combining the delivery items with real property.
8. The Supplier undertakes to release the securities to which it is entitled at the Purchaser's request to the extent that the exploitable value of its securities exceeds the claims to be secured by more than 10%; the Supplier shall be responsible for selecting the securities to be released.

## IV. Delivery Deadlines; Delay

1. Compliance with delivery deadlines shall be conditional upon the timely receipt of all Documents to be provided by the Purchaser, necessary approvals and releases, in particular of plans, as well as the Purchaser's compliance with the agreed terms of payment and other obligations. If these prerequisites are not fulfilled in time, the deadlines will be extended accordingly; this shall not apply if the Supplier is responsible for the delay.

2. If the failure to meet the deadlines is due to force majeure, e.g. mobilization, war, riot, or similar events, e.g. strike or lockout, the deadlines shall be extended accordingly.
3. The Purchaser may withdraw from the contract within the scope of the statutory provisions only if the delay is to the detriment of the Purchaser.
4. At the Supplier's request, the Purchaser shall declare within a reasonable period whether it is withdrawing from the contract due to the delay in delivery or insists on delivery.
5. If dispatch or delivery is delayed at the Purchaser's request by more than one month after notification of readiness for dispatch, the Purchaser may be charged storage costs amounting to 0.5% of the price of the items of the delivery for each month commenced, but in no case more than a total of 5%. The contracting parties shall be free to prove higher or lower storage costs.

#### **V. Transfer of Risk**

Even in the case of carriage-paid delivery, the risk shall pass to the Purchaser when the goods have been dispatched or collected from the Supplier. At the Purchaser's request and expense, Deliveries shall be insured by the Supplier against the usual transport risks.

#### **VI. Receipt**

The Purchaser may not refuse to accept Deliveries due to insignificant defects.

#### **VII. Material Defects**

The Supplier shall be liable for material defects as follows:

1. If even only a part of the delivery has a material defect at the time of the transfer of risk, the Supplier's liability for defects shall initially be limited to supplementary performance and, at the Supplier's option, to repair or replacement.
2. Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable operating resources or due to particular external influences not assumed under the contract, as well as in the case of non-reproducible software errors. If improper modifications or repair work are carried out by the Purchaser or by third parties, no claims for defects shall exist for these and the resulting consequences.
3. If the subsequent performance fails after at least 4 attempts, if it is objectively or subjectively impossible or if it is unreasonable for the Supplier, the Purchaser may only, at its option, rescind the contract or reduce the remuneration; no further claims shall exist. Subsequent performance shall be deemed unreasonable for the Supplier due to disproportionality if the cost of subsequent performance including transport, travel and labour costs as well as the cost of disassembly, reassembly or installation exceeds a total of 150% of the net price for the part of the delivery affected by the defect.
4. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour and material, to the extent that expenses increase due to the object of delivery having been subsequently brought to another location than the Purchaser's branch unless doing so complies with the intended use of the delivery.
5. The Purchaser's right of recourse against the Supplier pursuant to Sections 445a and 478 BGB (German Civil Code) shall in any case only exist to the extent that the Purchaser has not concluded any agreements with its customers that exceed the scope of the statutory provisions governing claims based on defects. Furthermore, No. 4 shall apply mutatis mutandis to the scope of the Purchaser's right of recourse against the Supplier pursuant to Section 478 para. 2 BGB.
6. The Purchaser shall thoroughly inspect each delivery for defects (including deviations in quantity or wrong delivery) immediately upon delivery and shall again thoroughly inspect the delivery for freedom from defects before converting it or installing it in another item. Defects must be reported to the Supplier in text form no later than on the 3rd working day after receipt of the delivery and after renewed inspection before installation, with a precise description of the defect. If a defect that was not initially apparent upon delivery or prior to installation becomes apparent at a later date, or if the Purchaser is notified of a defect by a third party, the Purchaser must also notify the Supplier of the defect in text form no later than on the 3rd working day after the defect is identified or notification is given. If the Purchaser does not or does not sufficiently comply with its obligations to inspect and give notice of defects, the Supplier's liability for defects shall be excluded pursuant to Section 377 para. 2, 3 HGB (German Commercial Code).
7. In the case of notices of defects, payments by the Purchaser may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The Purchaser may withhold payments only if a notice of defect is asserted about the justification of which there can be no doubt. If the notification of defects is unjustified, the Supplier shall be entitled to demand reimbursement from the Purchaser for the expenses incurred by it as a result.
8. Claims for material defects shall become statute-barred 12 months after the transfer of risk. This shall not apply insofar as longer periods are prescribed by law in accordance with Section 438 para. 1 no. 2 (buildings and things used for a building), Section 479 para. 1 (right of recourse in the sale of consumer goods) and Section 634a para. 1 no. 2 (defects of a building) BGB, as well as in cases of injury to life, limb or health, in the event of a wilful or grossly negligent breach of duty by the Supplier including its vicarious agents and in the event of fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of time limits shall remain unaffected.
9. For claims for damages, Art. XI (Other Claims for Damages) shall apply in all other respects. Further claims of the Purchaser against the Supplier and its agents or any claims other than those provided for in this Art. VIII based on a defect shall be excluded.

#### **VII. Industrial Property Rights and Copyrights; Defects of Title**

1. Unless otherwise agreed, the Supplier is obliged to provide the delivery free of industrial property rights and copyrights of third parties (hereinafter: IPR) only in the country of the place of delivery. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Deliveries made by the Supplier and used in conformity with the contract, the Supplier shall be liable to the Purchaser within the period stipulated in Art. VIII No. 2 as follows:

- a) The Supplier shall, at its option and expense, either obtain a right of use for the Supplies concerned, modify them so that the IPR is not infringed, or replace them. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to the statutory rights of rescission or reduction.
  - b) The Supplier's obligation to pay damages shall be governed by Article XI.
  - c) The aforementioned obligations of the Supplier shall only exist to the extent that the Purchaser immediately notifies the Supplier in writing of the claims asserted by the third party, does not concede the existence of an infringement and leaves all defensive measures and settlement negotiations to the Supplier's discretion. If the Purchaser ceases to use the Deliveries in order to mitigate damages or for other good cause, it is obliged to point out to the third party that such cessation of use does not constitute an acknowledgement of any infringement of the IPR.
2. Claims of the Purchaser shall be excluded insofar as it is responsible for the IPR.
  3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by an application not foreseeable by the Supplier or by the Deliveries being modified by the Purchaser or being used together with products not provided by the Supplier.
  4. In the event of IPR infringements, the provisions of Art. VIII Nos. 4, 5 and 9 shall apply mutatis mutandis to the claims of the customer set forth in No. 1. a. above.
  5. In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.
  6. Further or other claims of the customer against the Supplier and its agents based on a defect in title than those provided for in this Art. IX shall be excluded.

#### **IX. Impossibility; Adjustment of Contract**

1. Insofar as delivery is impossible, the customer shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. However, the Purchaser's claim for damages shall be limited to 10% of the value of that part of the delivery which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in cases of mandatory liability for intent, gross negligence or injury to life, body or health; this shall not entail a change in the burden of proof to the detriment of the Purchaser. The Purchaser's right to withdraw from the contract remains unaffected.
2. If unforeseeable events within the meaning of Article IV No. 2 substantially change the economic importance or the contents of the delivery or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. If this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. If the Supplier intends to exercise this right of rescission, it will notify the customer thereof without undue delay after having realized the consequences of the event, even if an extension of the delivery period had initially been agreed with the customer.

#### **X. Other Claims for Damages**

1. Claims for Damages and reimbursement of expenses of the Purchaser (hereinafter: Claims for Damages), irrespective of their legal basis, in particular due to breach of duties arising from the contractual obligation and from tort, shall be excluded.
2. This shall not apply in cases of mandatory liability, e.g. under the Product Liability Act (Produkthaftungsgesetz), in cases of intent, gross negligence, injury to life, body or health, or breach of an essential contractual condition (an essential contractual condition is any obligation, the performance of which is essential to the proper performance of the contract and in the performance of which the contracting party relies and may rely). However, the claim for damages for breach of material contractual obligations shall be limited to the foreseeable damage typical for the contract, unless caused by intent or gross negligence or based on liability for injury to life, limb or health. A change in the burden of proof to the detriment of the Purchaser shall not be deemed to be associated with the above provisions.
3. To the extent that the customer is entitled to Claims for Damages under this Art. XI, such claims shall become statute-barred upon expiry of the limitation period applicable to claims for material defects pursuant to Art. VIII No. 8. In the case of Claims for Damages under the Product Liability Act, the statutory limitation provisions shall apply.

#### **XI. Jurisdiction and Applicable Law**

1. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Supplier's registered office. However, the Supplier shall also be entitled to bring an action at the Purchaser's place of business.
2. The law of the Federal Republic of Germany shall apply.

#### **XII. Binding Nature of the Contract**

The contract shall remain binding in its remaining parts even if individual provisions are legally invalid. This shall not apply if adherence to the contract would represent an unreasonable hardship for one party.