

1. Scope, conclusion of contract, form

- (1) These General Terms and Conditions of Sale (GTCS) apply to all contracts of sale and contracts for work and materials (*contract*) between 5N Plus Lübeck GmbH, based in Lübeck, Germany, (*Seller/We*) and our customers (*Buyer*) who are not consumers as per § 13 BGB (German Civil Code). The GTCS apply exclusively; we do not accept the Buyer's general terms and conditions even if the Buyer refers to them in the context of their order and we do not expressly object to them.
- (2) The GTCS shall also apply as a framework agreement for future contracts with the same Buyer (ongoing business relationship) without us having to refer to them again in each individual case. The GTCS apply in the version valid at the time of the order and available on our website at any time or in any case in the version last communicated to the Buyer in text form.
- (3) Individual agreements (eg framework supply agreements, quality assurance agreements) and our specifications for specific cases, in particular in offers and order confirmations, shall take precedence over the GTCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of the contract conclusion.
- (4) Our offers are subject to change and non-binding. The goods order by the Buyer is considered a binding offer of contract, which remains valid for at least one week in the absence of any provision to the contrary.
- (5) A written order confirmation or delivery of the goods together with the delivery bill concludes a binding contract for the listed goods. This shall also apply if the order confirmation or the delivery shows minor or typical deviations from the order (eg regarding quantities, composition, etc.). These types of deviations shall be deemed accepted if and to the extent that the Buyer does not object to them without undue delay (as a rule within 5 days).
- (6) Legally relevant statements and notifications made by the Buyer after conclusion of the contract (e.g. setting of a deadline, objection, notification of defects, reduction/withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubt about the legitimacy of the person making the declaration, shall remain unaffected.

2. Purchase price, ancillary costs, due date

- (1) Unless otherwise agreed or stated according to clause 1(3), our current prices at the time of contract conclusion shall apply, ex warehouse, plus statutory VAT, public charges (e.g. customs duties, fees) and other additional costs (e.g. packaging and shipping costs). All additional costs will be quantified in the order confirmation if possible, but at the latest in the invoice.
- (2) If we have committed to prices and/or delivery quantities for a period of more than 3 months, we shall be entitled to make appropriate adjustments at our reasonable discretion (§ 315 BGB) in the event of unforeseen cost increases or delivery bottlenecks.

- (3) The purchase price including additional costs shall be payable without deductions within 14 days from dispatch or notification of readiness for dispatch of the goods (corresponds to invoice date), unless otherwise agreed or stated in the invoice for the benefit of the Buyer (e.g. cash discount, longer payment period). We are entitled (also within the context of an ongoing business relationship), at any time to carry out a delivery in whole or in part only against advance payment. We will declare a corresponding retention at the latest with the order confirmation.
- (4) We shall be entitled to issue invoices electronically (subject to the Buyer's objection). All payments shall be made by bank transfer in EURO or the agreed currency to our bank account stated in the invoice or, if applicable, by SEPA direct debit.

3. Default of payment, opposing rights, defence of uncertainty

- (1) Upon expiry of the payment deadline as per clause 2(3) the Buyer is in default. The interest on arrears shall amount to 9 percentage points per annum above the respective prime rate. Subject to further damages, we shall also be entitled to payment of a lump sum of EUR 40. Our claim to commercial due date interest pursuant to § 353 HGB remains unaffected.
- (2) The Buyer shall only be entitled to rights of offsetting or retention insofar as their claim has been legally established or is undisputed. This shall not apply insofar as the counterclaim directly concerns our main obligation to perform under the same contract.
- (3) If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our contractual claims for payment are jeopardised by a lack of solvency on the Buyer's part, we shall be entitled in accordance with the statutory provisions to refuse performance and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). When it comes to contracts for the manufacture of unjustifiable items (custom-made products), we may declare a withdrawal immediately. The statutory provisions on the dispensability of setting a deadline and further statutory claims shall remain unaffected in all cases.

4. Delivery terms, shipping

- (1) Unless otherwise agreed or specified according to section 1(3), the delivery shall be made ex our works/warehouse in Lübeck, which is also the place of performance for the delivery and any subsequent fulfilment. If no collection has been agreed, the delivery will be made to the buyer's place of business or the agreed delivery address using the shipping method we specified.
- (2) Any shipment of the goods is at the expense and risk (loss, deterioration and delay) of the buyer. We are entitled, but not obligated, to take out transport insurance customary in the industry at the Buyer's expense. In the event that the shipment is delayed for reasons for which we are not responsible, the risk shall pass to the Buyer at the time of notification of shipping readiness. The statutory transfer of risk due to default of acceptance as well as other rights resulting for us from the default of acceptance (e.g. right to compensation for storage costs or other additional expenses) shall remain unaffected.

- (3) We are entitled to make partial deliveries within the framework of the delivery periods and what is reasonable for the Buyer.

5. Delivery period, non-availability of the service, delivery delay

- (1) The delivery period shall be agreed individually or specified by us within the scope of the order confirmation. If this is not the case, the delivery period is approx. 2 weeks from the contract conclusion.
- (2) If we are unable to meet a binding delivery deadline for reasons for which we are not responsible (non-availability of the service, e.g. due to untimely self-delivery by upstream suppliers or force majeure), we shall promptly inform the Buyer of this, stating the reason for the delay and, if applicable, the new, expected delivery deadline. Insofar as the service is no longer available at all or is not available within the new delivery period, we shall be entitled to withdraw from the contract; in this case, we shall immediately refund any payments already made by the Buyer.
- (3) The preconditions and consequences of any delay in delivery shall be determined in accordance with the statutory provisions. Specifically, we shall not be in default as long as the Buyer is predominantly responsible for the delay (e.g. due to missing information) or the performance fails to materialise as a result of any other circumstance for which we are not responsible. In all cases, a written reminder from the Buyer is required.
- (4) If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) of the delayed goods for each full calendar week of the delay, but not more than a total of 5% of the contractual delivery value. We reserve the right to prove that the Buyer has not suffered any damages at all as a result of the delay or that the damages are significantly less than the aforementioned lump sum. Otherwise, in the event of our delivery delay, the Buyer shall be entitled to withdraw from the contract in accordance with the statutory provisions, i.e. as a rule at the earliest after the unsuccessful expiry of a reasonable grace period they set.
- (5) Further contractual or statutory rights of the contracting parties as well as the statutory provisions on the execution of the contract in the event of an exclusion of the obligation to perform (e.g. due to impossibility) shall remain unaffected.

6. Retention of title

- (1) We retain the title to the goods (*reserved goods*) until full payment of all claims arising from the contract and an ongoing business relationship.
- (2) The reserved goods shall be treated with care and stored separately from other goods. It must be insured to the usual extent at replacement value against property damage (in particular fire, water and theft damage).
- (3) The reserved goods may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods subject to retention of title.
- (4) In case of breach of contract by the Buyer, in particular in the case of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the reserved goods on the basis of the title retention. The demand for a

return of goods does not simultaneously include the declaration of withdrawal; we are rather entitled to demand only the surrender of the reserved goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.

- (5) Until revoked in accordance with below c), the Buyer shall be authorised to further process and/or sell the reserved goods in the ordinary course of business (*extended reservation of title*). In this case, the following provisions shall apply in addition:
- a) Any processing (including mixing and combining) shall be carried out for us as the manufacturer of the newly created product. We acquire direct ownership of the product at full value or - if the processing is carried out from materials of several owners - co-ownership of the product in the ratio of the value of the reserved goods to the value of the product. In all other respects, the same shall apply to the resulting product as to the goods subject to title retention.
- b) The Buyer hereby assigns to us by way of security any claims against third parties arising from the resale of the reserved goods or the product - in the event of our co-ownership on a pro rata basis. We accept the assignment. The same applies to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods (e.g. insurance claims or claims arising from tort for loss or destruction). The Buyer's obligations set out in Clause 6(2) and 6(3) shall also apply in respect of the assigned claims.
- c) Apart from us, the Buyer also remains authorised to collect the assigned claim. We undertake not to collect the claim as long as the purchaser fulfils his payment obligations towards us and we do not assert the retention of title by exercising a right pursuant to art. clause 6(4). If this is the case, however, we may demand that the Buyer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Buyer's authorisation to further sell and process the reserved goods.
- d) If the feasible value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

7. Examination and notification of defects

- (1) We shall not be liable for defects of which the purchaser is aware at the time of contract conclusion or is not aware of due to gross negligence (§ 442 BGB). The Buyer is obliged to inspect the goods immediately for defects (including wrong and short deliveries) in accordance with the statutory provisions (§§ 377, 381 HGB) and, insofar as this is feasible in the ordinary course of business, also to investigate any suspicion of defects with reasonable effort. In any case, an examination must be carried out again immediately before further processing, e.g. by mixing.
- (2) In the event that a defect becomes apparent during delivery, inspection or at any later time (also due to complaints by a customer of the Buyer), we must be notified of this promptly. In any case, obvious defects must be reported in writing within 3 days of delivery, and defects that are not apparent

upon inspection must be reported within the same period following discovery. In addition, transport damages must also be reported directly to the transport company and noted in the acknowledgement of receipt. All notifications and complaints must be made in writing.

- (3) If the purchaser fails to properly inspect the goods and/or notify us of defects, our liability for the defect not reported or not reported in time or properly shall be excluded in accordance with the statutory provisions.

8. Buyer's claims for defects

- (1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. The special statutory provisions in the case of final delivery of the newly manufactured goods to a consumer (supplier recourse pursuant to §§ 445a, 445b, 478 or §§ 445c, 327 para. 5, 327u BGB) shall remain unaffected, unless an equivalent compensation has been agreed in the specific case.
- (2) The agreement on the quality and the intended use of the goods (including accessories and instructions) shall form the basis of the liability for defects. All product descriptions and manufacturer's information that are part of the individual contract or are that we publish at the time of contract conclusion (e.g. certificate of analysis) serve as the agreement on the quality of the products.
- (3) In all other respects, the question of defectiveness shall be assessed in accordance with the statutory provisions (Section 434 (3) BGB). Public statements made by the manufacturer or on their behalf (in particular in advertising or on the label of the goods) take precedence over statements made by other third parties. Insofar as compliance with public law requirements (including product or market-related obligations) is relevant in this context, only the regulations applicable to a marketability of the goods within the Federal Republic of Germany shall apply as a benchmark. Requirements in other countries, in particular the country of destination of the product, which deviate from this to our disadvantage, shall only apply if this has been expressly agreed in the individual case.
- (4) The Buyer's claims for defects shall be subject to the condition that they have complied with their duties of inspection and notification as per clause 7. Minor or commercially typical deviations of the delivery from the ordered goods (e.g. with regard to quantities, composition, etc.) shall not constitute a defect.
- (5) If the delivered goods are defective, we may choose whether to provide a subsequent performance by remedying the defect (rectification) or by delivering goods free of defects (replacement). If the type of subsequent performance selected by us is unreasonable for the Buyer in the individual case, the Buyer may reject it. The right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- (6) We can make the subsequent performance dependent on the Buyer paying the purchase price due. The Buyer in turn shall be entitled to temporarily retain a part of the purchase price that is reasonable in relation to the defect. If there is an actual defect, we shall bear the expenses required for the purpose of subsequent performance, in particular labour and material costs (not: costs of transporting the goods to the place of subsequent performance). Otherwise, we may demand reimbursement from the Buyer for the costs incurred (in particular

inspection and transport costs), unless the lack of a defect was not apparent to the Buyer.

- (7) If a reasonable deadline set by the Buyer for subsequent performance has expired without success or is dispensable in accordance with the statutory provisions, the Buyer may withdraw from the contract or reduce the purchase price in accordance with the statutory provisions. However, in the case of an insignificant defect, there is no right of withdrawal. Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with the provisions pursuant to clause 9.
- (8) Notwithstanding section 438 (1) no. 3 BGB (German Civil Code), the general limitation period for claims arising from defects of quality and title (warranty period) shall be one year from delivery. After expiry of the warranty period, claims for damages due to defects. Special statutory provisions on the statute of limitations (in particular sections 438 (1) nos. 1 and 2, para. 3, 444, 445b BGB) shall remain unaffected.
- (9) As a rule, we are not obligated to inspect the components and substances used by us for production vis-à-vis the Buyer. If such an obligation does exist due to the special circumstances of the individual case, it is not an essential duty of the contract. We do not take any responsibility for the manufacturing process of our suppliers. Even outside the liability for defects, only the regulations applicable to a marketability of the goods within the Federal Republic of Germany (e.g. information obligations) shall be binding for us, unless otherwise expressly agreed.
- (10) In the event of defects, the Buyer shall only be entitled to claim damages or reimbursement of expenses incurred in vain in accordance with the aforementioned provisions in conjunction with the limitations set forth in clause 9.

9. Damages, withdrawal

- (1) We shall be liable for damages in accordance with the statutory provisions, unless otherwise stipulated in the following.
- (2) In the event of breaches of duty - irrespective of the legal grounds - we shall be liable for intent and gross negligence within the scope of fault-based liability.
- (3) In the event of simple negligence and milder standards of liability (e.g. care in own affairs), we shall only be liable for:
- damages resulting from loss of life, injury to body or health and
 - for damages resulting from a not insignificant breach of a material contractual obligation (obligation whose fulfilment is a precondition for the proper performance of the contract and on whose fulfilment the contractual partner regularly relies and may rely on). In this case, however, liability shall be limited to compensation for foreseeable, typically occurring damage.
- (4) The above liability limitations shall also apply to third parties and to breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. The provisions in clause 10 apply to claims under the Product Liability Act.
- (5) Due to a breach of a contractual obligation that does not consist of a defect, the Buyer may only withdraw from or terminate the contract if we are responsible for the breach of obligation. The Buyer's right to withdraw from the contract in the event of a delay in delivery pursuant to clause 5(3) shall remain unaffected, including the statutory provision on the burden of proof. Apart from that, the statutory requirements and legal consequences shall apply to the rights of withdrawal and termination.

10. Product liability

- (1) Our liability for defective products vis-à-vis third parties (including employees, staff, etc. of the purchaser) shall be governed by the statutory provisions. The Buyer may derive claims against us from this, in particular within the framework of a joint and several debtor compensation, at most to the extent that we ourselves are liable in the external relationship and we have culpably (co-)caused the defect.
- (2) In the circumstance that the Buyer is required to carry out a risk prevention measure (e.g. product recall) due to a defective product delivered to him by us, we shall participate in the costs demonstrably incurred by the Buyer for this purpose in accordance with the statutory provisions, but only to the extent that:
 - a) we ourselves are obliged to avert danger and have culpably (co-)caused the defect of the product;
 - b) the Buyer has informed us in advance of the type and scope of the risk prevention measure, including the participation attributable to us - insofar as possible and reasonable - and has given us the opportunity to comment; and
 - c) the hazard prevention measure carried out was legally and actually necessary, taking into account all the circumstances of the individual case.
- (3) If third parties assert claims against us due to a defective product delivered by us to the Buyer, the Buyer shall indemnify us against such claims insofar as the Buyer is solely or predominantly responsible internally for the defect giving rise to the liability, in particular due to defective inspection and/or further processing of the goods, taking into account any agreements existing between the parties with regard to quality assurance or any instructions and directions issued by us.

11. Choice of law, place of jurisdiction

- (1) The laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods shall cover these GTCS and the contractual relationship between the parties. The choice of law shall also apply to non-contractual obligations that are closely connected with the contract. In all other aspects, the scope and extent of the choice of law shall be determined in accordance with the statutory provisions. The prerequisites and effects of the retention of title shall be subject to the law at the respective storage place of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective thereafter.
- (2) If the Buyer is a merchant, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our place of business in Lübeck, Germany (local or regional court). The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 BGB. However, in all cases we shall also be entitled to take legal actions at the place of performance of the delivery obligation pursuant to clause 4(1) or a prior individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive responsibilities, shall remain unaffected.

As at: February 2022