



5N PLUS

Purchasing Terms and Conditions of 5N PV GmbH (Version 11/2021)

5N PV GmbH, Oderlandstr. 104, 15890 Eisenhuettenstadt

1. Scope of application, conclusion of contract, form

- (1) These General Terms and Conditions of Purchase ("GTC") shall apply to all purchase contracts and contracts for work and materials ("Contract") between 5N PV GmbH with its registered office in Eisenhuettenstadt ("Buyer/us") and our suppliers ("Seller"). The GPC shall only apply if the Seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law. The GPC shall apply exclusively; we do not accept the Seller's general terms and conditions of business even if express reference is made to them when the contract is concluded.
- (2) The GPC shall also apply as a framework agreement for future contracts with the same Seller (ongoing business relationship) without our having to refer to them again in each individual case. The GPC shall apply in the version valid at the time of our order and available on our homepage or in any case in the version last notified to the Seller in text form.
- (3) Individual agreements (e.g., framework supply agreements, quality assurance agreements) and individual regulations from our order (e.g., deviating delivery time) shall have priority over the GPC. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (4) Our order shall be deemed binding at the earliest upon written submission. The Seller shall notify us of any obvious errors (e.g., typing and spelling errors) and incompleteness of the order including the order documents for the purpose of correction or completion prior to acceptance; otherwise, the contract shall be deemed not to have been concluded.
- (5) The Seller shall be obliged to confirm our order in writing within 5 days or to execute it without reservation by dispatching the goods (acceptance). A delayed acceptance shall be deemed to be a new offer and shall require acceptance by us; this shall not apply if our order was placed in response to a binding offer by the Seller and the contract was thus already concluded.
- (6) Legally relevant declarations and notifications made by the Seller after the conclusion of the contract (e.g., setting of deadlines, reminders, withdrawal) must be made in writing. Written form in the sense of these GPC includes written and text form (e.g., letter, e-mail, fax). Legal formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, shall remain unaffected.

2. Prices and terms of payment

- (1) The price stated in the order is binding. All prices shall be inclusive of statutory value-added tax if this is not shown separately.
- (2) Unless otherwise agreed, the price shall include all services and ancillary services of the Seller (e.g., assembly, installation) as well as all ancillary costs (e.g., packaging, transport, insurance). The Seller shall take back packaging material upon our request.
- (3) The agreed price shall be due for payment within 30 days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If payment is made within 14 days, the Seller shall grant us a 2% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made in due time if our transfer order is received by our bank before expiry of the payment deadline; we shall not be responsible for any delays caused by the banks involved in the payment process.
- (4) The invoice must be sent to us separately from the goods and must contain the details from our order, in particular the date and order number. Otherwise, we shall not be responsible for delays in payment. We shall only accept electronic invoicing based on a separate agreement.
- (5) We do not owe any interest on arrears. Default in payment shall be governed by the statutory provisions, whereby, if applicable, a written reminder by the Purchaser shall be required in each case.

- (6) We shall be entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we shall be entitled to withhold payments due as long as we are still entitled to claims against the Seller arising from incomplete or defective performance.
- (7) The Seller shall have a right of set-off or retention only in respect of counterclaims which have become res judicata or are undisputed.

3. Delivery time and delay in delivery

- (1) The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 1 week from the conclusion of the contract. The Seller shall be obliged to notify us in writing without delay if it is likely that it will not be able to meet agreed delivery times - for whatever reason.
- (2) If the Seller does not perform or does not perform within the agreed delivery time or if the Seller is in default, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in para. 3 shall remain unaffected.
- (3) If the Seller is in default, we may - in addition to further statutory claims - claim lump-sum compensation for our damage caused by default in the amount of 1% of the net price (delivery value) of the delayed goods per full calendar week, but in total not more than 5% of the contractual delivery value. We reserve the right to prove that we have incurred higher damages. The seller reserves the right to prove that we have not incurred any damage at all or that the damage is significantly lower.

4. Delivery, Transfer of Risk, Default of Acceptance

- (1) The Seller shall not be entitled to have the performance owed by it rendered by third parties (e.g., subcontractors) without our prior written consent. The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g., limitation to stock, single item). The Seller shall also be obliged to manufacture the goods free of defects if it does not manufacture the goods or processed components itself but purchases them.
- (2) Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our registered office (Oderlandstraße 104, 15890 Eisenhuettenstadt). The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver). Partial deliveries, even within the agreed delivery period, require our prior written consent.
- (3) The delivery shall be accompanied by a delivery bill containing the following information and evidence: Date (issue and dispatch), contents of the delivery (article number and quantity), our order identification (date and number) as well as, at our request, information relevant to customs and export control (origin, tariff number, customs value) with corresponding accompanying documents (supplier's declarations, certificates of origin, permits, etc.). If the delivery bill is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. A corresponding dispatch bill with the same content shall be sent to us separately from the delivery bill.
- (4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- (5) The statutory provisions shall apply to the occurrence of our default in acceptance. However, the Seller must also expressly offer us its performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g., provision of material). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a non-

representable item to be produced by the Seller (individual production), the Seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

5. Secrecy and Retention of Title

- (1) We reserve the property rights and copyrights to all product specifications, technical documentation, and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us upon completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The same shall apply to any other information relating to the company or the contract unless such information is publicly accessible. Furthermore, the existence of the business relationship as such shall also be kept secret. Our company, logos and trademarks may only be mentioned to third parties, used as a reference, or published in any other way with our express written consent.
- (2) The above provisions shall apply mutatis mutandis to substances and materials (e.g., software, finished and semi-finished products) as well as to tools, templates, samples and other objects which we provide to the Seller for production (material provided) or which are procured or manufactured exclusively for contractual purposes and the procurement or manufacture of which is remunerated by us (means of production). Objects in the above sense shall remain our property in all cases and processing phases. It is to be stored separately, marked as such, insured to an appropriate extent against destruction and loss and may not be transferred or pledged to third parties as security.
- (3) Any processing, mixing or combination (further processing) of material provided and of means of production shall be carried out for us as manufacturer. The same shall apply in the event of further processing of the delivered goods by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- (4) The transfer of ownership of the goods to us shall be unconditional and without regard to the payment of the price. If, however, in individual cases we accept an offer of the Seller to transfer ownership conditional on payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom or to further process the goods (subsidiary validity of the simple reservation of title extended to the resale). All other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to further processing are excluded.

6. Liability for defects, inspection, subsequent performance

- (1) The statutory provisions shall apply to our rights in the event of defects in the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller and its vicarious agents (in particular upstream suppliers or manufacturers), unless otherwise stipulated below or in particular in a quality assurance agreement.
- (2) The Seller shall be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to us. In any case, the product descriptions, information and data on marketability which are the subject of the respective contract (in particular by designation or reference in our order) or which have been made publicly known by the Seller or manufacturer (in particular on the Internet or in catalogs, etc.) shall be deemed to be an agreement on the quality. In all other respects, the question of defectiveness shall be assessed in accordance with the statutory provisions. To the extent that compliance with public law requirements (including substance law/RoHS/REACH and other product- or market-related obligations) is relevant in this context, the relevant regulations in the Federal Republic of Germany (including European law) shall apply as a benchmark. In addition, the Seller shall also be liable for the marketability of the goods in other countries if it must expect the goods to be exported there. Insofar as we are subject to statutory labelling and/or

information obligations regarding the goods (also in processed form, if applicable), vis-à-vis our customers and consumers, the Seller shall, upon request, provide us with all information and evidence (e.g., data sheets, supplier's declarations) required for the fulfillment of these obligations in a form suitable for disclosure.

- (3) We shall not be obliged to examine the goods or to inquire about any defects upon conclusion of the contract. In partial deviation from § 442 para. 1 sentence 2 of the German Civil Code (BGB), we shall therefore also be entitled without restriction to claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- (4) The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial duties of inspection and notification of defects, subject to the following proviso: Our duty of inspection shall apply to defects which become apparent during our incoming goods inspection by means of external examination including the delivery documents (e.g., transport damage, wrong delivery and short delivery) or which are identifiable during our quality control by means of random sampling. In the case of other defects, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. Insofar as acceptance has been agreed, there shall be no obligation to inspect. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our duty to examine, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within one week of discovery or, in the case of obvious defects, of delivery.
- (5) Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods have been installed in another item or attached to another item in accordance with their type and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by the Purchaser even if there was no defect; this shall not apply if we were aware of the non-existence of the defect or were grossly negligent in failing to detect it.
- (6) Notwithstanding our statutory rights and the provision in subsection (5), the following shall apply: If the Seller fails to meet its obligation to remedy the defect - at our option by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery) - within a reasonable period of time set by us, we shall be entitled to remedy the defect ourselves and to demand reimbursement of the expenses incurred for this purpose or a corresponding advance payment from the Seller. If subsequent performance by the Seller has failed or is unreasonable for us (e.g., due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances without undue delay, if possible, in advance.
- (7) Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

7. Supplier recourse

- (1) We shall be entitled to our statutory rights of recourse within a supply chain (supplier recourse pursuant to §§ 445a, 445b, 478 BGB) without restriction in addition to the claims for defects. We shall be entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement) that we owe to our customer in the individual case. Our statutory right of choice (§ 439 para. 1 BGB) shall not be limited hereby.
- (2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 445a) para. 1, 439 paras. 2 and 3 BGB), we shall notify the Seller and ask for a written statement, briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the defect performance actually provided to our customer shall also be deemed to be owed; in this case, the Seller shall be responsible for proving the contrary.

- (3) Our claims from supplier recourse shall also apply if the defective goods have been further processed by us or by one of our customers, e.g., by incorporation into another product.

8. Intellectual Property Rights

- (1) The Seller shall be liable for ensuring that the delivery of the goods does not infringe any intellectual property rights of third parties (e.g., patents, utility models, copyrights) within Germany, the EU, or the country of destination of the goods known to the Buyer. Clause 6 shall apply mutatis mutandis to the scope of liability unless otherwise provided for in the following provisions. Clause 11(2) shall apply regarding the limitation period.
- (2) If claims are asserted against us by a third party due to an infringement of intellectual property rights to the goods, the Seller shall be obliged to indemnify us against such claims upon first written request. The indemnification obligation shall apply to all expenses necessarily incurred by us because of or in connection with the claim by the third party (including the costs of legal action), unless the Seller proves that it is not responsible for the defect of title.

9. Product liability

- (1) If the Seller is responsible for product damage, it shall indemnify us against claims by third parties to the extent that the cause lies within its sphere of control and organization and it is liable itself in relation to third parties.
- (2) Within the scope of his indemnification obligation, the Seller shall also reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with a claim by a third-party including risk prevention measures carried out by us (e.g., product recall). We shall inform the Seller in advance of the content and scope of any recall measures - insofar as this is possible and reasonable - and give him the opportunity to comment. Further legal claims shall remain unaffected.
- (3) The Seller shall take out and maintain an extended product liability insurance and a recall costs liability insurance with a lump sum coverage of at least EUR 5 million per insured event and EUR 10 million per year. We are entitled to request a copy of relevant liability policies at any time.

10. Compliance, import and export control

- (1) The Seller shall always comply with the law and with national and international regulations, in particular regarding data protection, materials law/RoHS/REACH, occupational health and safety, anti-corruption (including bribery and corruption) and customs and foreign trade law.
- (2) The Seller shall be obliged to obtain any information, approvals and evidence (supplier's declarations, certificates of origin, etc.) required for customs or import or export control. In the case of deliveries from outside the EU, the Seller must declare an applicable customs value in accordance with the relevant conventions and regulations. The Seller shall be obliged to notify if the goods are subject to special regulations in certain countries.
- (3) In addition to contractual duties to provide information, in connection with the delivery bill pursuant to Clause 4(3) and the product description pursuant to Clause 6(2), corresponding statutory duties shall remain unaffected in all cases.
- (4) The contracting party undertakes to comply with the Code of Conduct of the Business Social Compliance Initiative (BSCI) (www.bsceu.org). In particular, it shall ensure that children and young people are only employed in compliance with the rules of the International Labor Organization (ILO), the United Nations (UN) and national law. He will also impose this obligation on his suppliers and provide proof of this upon request.

11. Limitation

- (1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- (2) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims for defects (warranty period) shall be 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon ac-

ceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title including intellectual property rights, whereby the statutory limitation period for third party claims in rem for surrender of goods (Section 438 (1) No. 1 of the German Civil Code (BGB)) shall remain unaffected; in addition, claims arising from defects of title shall not become time-barred in any case as long as the third party can still assert the right against us - in particular in the absence of a limitation period.

- (3) The statute of limitations shall be suspended upon receipt by the Seller of a written notice of defect. In the event of subsequent performance, the limitation period for replaced or repaired parts shall start anew, unless the Seller was recognizably not obliged to provide subsequent performance (goodwill service).
- (4) The limitation periods of the law on sales including the above extensions shall apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply to these, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

12. Choice of law, place of jurisdiction

- (1) The law of the Federal Republic of Germany shall apply to these GPC and the contractual relationship between us and the Seller to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The choice of law shall also apply to non-contractual obligations closely connected with the contract. In all other respects, the scope and extent of the choice of law shall be determined in accordance with the statutory provisions.
- (2) If the Seller is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), 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 registered office in Eisenhuettenstadt, Germany (local or regional court). The same shall apply if the Seller is an entrepreneur within the meaning of § 14 BGB (German Civil Code). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to Section 4(2) or a prior individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.