

## **General Terms and Conditions of 5N Plus Lübeck GmbH**

### **§ 1 General**

- (1) The terms and conditions set out below shall form part of the agreement concluded with us.
- (2) Our General Terms and Conditions shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.
- (3) We hereby object to any counter confirmation, counteroffer or other reference by the Purchaser to its general terms and conditions; any dissenting terms and conditions of the Purchaser shall only apply if we have confirmed the same in writing.
- (4) The Purchaser may not assign any claims arising from transactions with us without our written approval.

### **§ 2 Offers; Orders**

- (1) Our offers shall not be binding; in particular with reference to quantities, price and delivery time.
- (2) Orders placed by the Purchaser shall not be regarded as accepted until these have been confirmed to us in writing. If we should fail to confirm an agreement in writing which we have entered into verbally or in a telephone conversation, then our invoice shall be regarded as confirmation.

### **§ 3 Prices; Weight**

- (1) Unless otherwise expressly agreed, our prices are ex works, exclusive of any statutory VAT which shall be payable at the date of delivery, and exclusive of costs for packaging.
- (2) If, as a result of a change of law between the agreement date and the delivery date, additional or increased charges – in particular duties, levies, currency compensation payments, shall be payable, then we shall have the right to increase the purchase price accordingly. The same shall apply to any fees for examination.
- (3) The purchase price shall be based on the weight as determined at the loading. A customary weight decrease during transport shall be at the risk of the Purchaser.

### **§ 4 Quantity; Quality**

- (1) At all times, we shall have the right to supply 5% more or less than the agreed amount.
- (2) Unless otherwise agreed or confirmed by us in writing, the quality of the goods shall be in accordance with customary trade practice.

### **§ 5 Shipment; Delivery; Passing of Risk**

- (1) The goods shall be transported insured. Any costs arising from the transport insurance shall be at the expense of the Purchaser only. In any event, the risk of loss or damage to the goods passes to the Purchaser upon dispatch. This shall also apply in cases of any delivery free of charge and regardless of which means of transport shall be used.
- (2) The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable discretion and be without liability for the cheapest and fastest transport.
- (3) If the Purchaser provides the means of transport, then it shall be responsible for its availability on time. We shall immediately be informed of any delays. Any costs arising therefrom shall be at the expense of the Purchaser.
- (4) We shall have the right to reasonable delivery in installments.
- (5) Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

(6) Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding.

(7) Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities and our reservation of timely supply from our own suppliers in accordance with subsection (5) above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading. They shall entitle us to also withdraw from the Agreement which shall not result in any compensation claims of the Purchaser.

(8) If any agreed time of delivery or unloading shall be exceeded and there shall be no incident referred to in subsection (7) above, then the Purchaser must specify to us a reasonable cure period of minimum two weeks. If we shall fail to meet such deadline also, then the Purchaser shall have the right to rescind the Agreement but shall have no right to seek compensation for breach of contract or default unless in cases of willful misconduct or gross negligence on our part.

#### **§ 6 Duty to Inspection and Objection; Purchaser's Indemnification of 5N Plus Lübeck GmbH**

(1) Upon delivery at the agreed destination or (in the event of self-supply) upon taking possession, the Purchaser shall immediately

- a) check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note and/or the acknowledgement of receipt/warehouse removal note of the storage and
- b) conduct a quality check representatively on a spot check basis and, for such purpose, open the packaging (cartons, bags, tins, foils etc.).

(2) In case of a notice of defect the Purchaser shall comply with the following procedures and deadlines:

- a) The notification shall be made by no later than the expiry of the working day on which the delivery of the goods to the agreed destination or on which possession of the goods has been taken. In the event of an objection to a hidden defect which, despite a first inspection in accordance with subsection (1) above, has remained undiscovered a different deadline regime shall apply. In such case the objection must be raised within the earlier of the expiry of the working day on which the defect has been discovered but in any event by no later than two weeks after delivery or takeover of the goods.
- b) The detailed notice shall be delivered to us within the aforementioned deadlines in writing, by telegraph, telex or fax. Any notice by telephone conversation shall not be accepted. Any notice to sales representatives, commission agents or agents shall not be valid.
- c) The notice must clearly specify the kind and amount of the alleged defect.
- d) The Purchaser agrees to make available for inspection the objected goods at the place of inspection; such inspection may be done by us, our suppliers or any expert we may have designated.

(3) No objections with regard to quantities, weight or packaging of the goods shall be possible unless a note has been placed on the delivery note or a consignment note or a receipt of acknowledgement in accordance with subparagraph (1) (a) above. Moreover, any right to object shall cease to exist, when the Purchaser has mixed, used or resold the goods delivered or shall have started its processing.

(4) Any good for which objections have not been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

#### **§ 7 Warranty; Limitation of Liability**

(1) Precondition for any warranty claim of the purchaser is the purchaser's full compliance with all legal requirements regarding inspection and objection.

(2) Warranty claims shall be time-barred after 12 months of the passage of risk.

(3) In case of non-conformity of the goods the Purchaser is entitled to alternative performance in the form of subsequent improvement or delivery of conforming goods. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract.

(4) In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage.

(5) In case the goods are regarded approved and accepted according to § 6 (4), Purchaser will indemnify, defend and hold us harmless from and against all losses, damages, costs and expenses arising out of or related to any third-party claims concerning any alleged non-conformity of goods delivered by us and disposed or processed by Purchaser.

(6) Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.

(7) Any liability not expressly provided for above shall be disclaimed.

## § 8 Payment

(1) Our purchase price claims are net cash amounts and payable free of any deduction upon receipt of the invoice unless other payment terms shall have been agreed.

(2) We shall accept promissory notes and checks only upon specific arrangement and only in lieu of payment. Any fees for discount bills or promissory notes shall be at the expense of the purchaser and immediately payable.

(3) If the invoice amount shall not have been settled within 10 calendar days after the date of invoice or as at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in a proven amount but in any event an amount equaling 8% above the base rate of the European Central Bank.

(4) If the Purchaser's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or checks has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately due and payable, even if we shall have accepted promissory notes or checks. The same shall apply if the Purchaser shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the Agreement.

(5) The Purchaser shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us.

## § 9 Retention of Title

(1) We shall retain full title of the goods that have been delivered until the Purchaser has discharged all claims arising from the business relationship which shall include any account balance and claims from refinancing or reverse promissory notes.

(2) The Purchaser shall have the right to dispose of the goods delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in § 8 (4) above. Moreover, we may withdraw the sales authority of the Purchaser through written notice if it shall be in breach of any obligation owed to us and shall in particular be in payment default or we shall become aware of other incidents that give rise to doubts about its creditworthiness.

(3) The Purchaser's right to process the goods delivered shall also be subject to the limitations set out in subsection (2) above. The Purchaser shall not acquire title to the fully or partly processed goods; the processing shall be free of charge for our benefit as Manufacturer in the sense of § 950 of the German Civil Code (BGB). If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the Purchaser that we shall acquire title upon processing of the goods and the Purchaser shall remain custodian of the goods which shall be free of charge.

(4) If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third party property, then we shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods.

(5) Goods in which we shall acquire sole or co-title in accordance with subsection (3) and (4) shall, the same as with regard to the goods delivered under retention of title according to subsection (1) above, be regarded as goods delivered under retention of title for the purposes of the following paragraphs.

(6) The Purchaser hereby assigns to us all claims arising from the resale of the goods delivered under retention of title. Such claims shall also include claims against the bank which, within the scope of such sale, shall have issued or confirmed a letter of credit for the benefit of the Purchaser (= reseller). We hereby accept such assignment. If the goods delivered under retention of title shall be a processed good or a mixed stock, where, in addition to the goods delivered by us, only

such goods exist that are either the Purchaser's property or a third party property as a result of a (simple) retention of title, then the Purchaser shall assign all of the claim arising from the resale. In the other case, i. e. in the event of a conflict between pre-assignment claims by other suppliers, we shall be entitled to receive any resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of our goods and the other processed or mixed goods.

(7) Where our claims shall be undoubtedly be secured through the assignment and retention by more than 125%, any surplus of receivables and/or good delivered under retention of title shall, upon demand of the Purchaser, be released in accordance with our choice.

(8) The Purchaser shall be authorized to collect any receivables arising from the resale of goods. Such authority shall cease to exist in the event that there shall no longer be an ordinary course of business as defined in § 8 (4) above. Moreover, we may withdraw the Purchaser's authority to collect, if it shall be in breach of any obligation owed to us and shall in particular be in payment default or we shall become aware of other incidents that give rise to doubts about its creditworthiness. If the above authority shall cease to exist or be withdrawn by us, then the Purchaser shall upon our demand immediately specify to us its debtors in the claims assigned and provide us with all information and documentation necessary for collection.

(9) In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the Purchaser shall notify such party of our property/our right and immediately inform us about such action. The Purchaser shall bear the costs of any intervention.

(10) If the Purchaser shall be in breach of contract, in particular in payment default, then it shall, upon our demand, immediately return to us all goods delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such goods. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title shall not be regarded as a rescission of this Agreement.

(11) In the cases referred to in § 8 (4) above, we may require the Purchaser, to inform us about the claims arising from the resale that have been assigned to us in accordance with § 9 (6) above including its debtors. Following such information, we shall have the right to disclose the assignment as we consider appropriate.

## **§ 10 Final Provisions**

(1) Place of performance and exclusive place of jurisdiction for all disputes arising from this Agreement is Lübeck, Germany. However, we may also select a different place of jurisdiction.

(2) The laws of Germany shall apply. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods.

(3) The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

We have stored data of the Purchaser on accordance with the German Data Protection Act.