



NADELLA GmbH Terms and Conditions of Sale and Delivery

Section 1: General

1. Our Terms and Conditions of Sale shall apply exclusively. We will not recognise any terms and conditions from the Purchaser that contradict or differ from our Terms and Conditions of Sale unless otherwise expressly agreed in writing. Our Terms and Conditions of Sale shall still apply if we carry out delivery to the Purchaser unconditionally, knowing that conditions of the Purchaser contradict or differ from our Terms and Conditions of Sale.
2. Our Terms and Conditions of Sale also apply to all future transactions with the Purchaser.
3. These Terms and Conditions of Sale and Delivery shall only apply to contracts in the form of existing long-term contractual obligations as of 01.03.2003. Up to this point in time, our previous Terms and Conditions of Sale and Delivery apply. These can be sent immediately upon request.
4. Our Terms and Conditions of Sale apply only to persons who are exercising their commercial or self-employed professional activity at the time the Contract is concluded, to legal persons under public law and to legal entities under public law.

Section 2: Offer

1. Our offers are subject to confirmation.
2. We can accept orders within a period of six weeks. The said period commences upon receipt of order.
3. Our written confirmation of order is definitive in respect of supply of goods or services. Assurances regarding characteristics, supplements or ancillary agreements must be in writing to take legal effect.
4. Our sales staff are not authorised to enter into verbal ancillary agreements or to give assurances extending beyond the content of the written Contract.
5. We retain title and intellectual property rights to all diagrams, drawings, calculations and other documentation. This applies in particular to all documents which are referred to as “confidential”; prior to transmission thereof to third parties the Purchaser requires our express written permission.



6. In the case of series production or special custom designs we reserve the right to apply an over or under-delivery rate of 10%. The resultant over or under-delivery shall be invoiced accordingly.
7. We are entitled to make part deliveries if this may be considered reasonable for the Purchaser.

Section 3: Purchaser's Instructions

The Purchaser undertakes to provide us with a comprehensive description of every aspect and detail of the conditions under which the goods supplied shall be used.

Section 4: Prices and Payment

1. If nothing to the contrary emerges from the confirmation of order, our prices are ex works (our Nufringen warehouse facility) and inclusive of loading and exclusive of packaging, shipping and insurance, which shall be invoiced separately.
2. All prices shall be given in the respective currency. Statutory value-added tax is not included in our prices and shall be invoiced separately at the applicable statutory rate on the day of invoicing.
3. Price changes, in particular to adjust to increased material and labour costs, shall only be permissible if more than six weeks have expired between the date the Contract is concluded and the agreed delivery date. In this case the price valid on the day of delivery to us shall apply.
4. Our invoices must be paid in full free of all charges within 30 days of the date of invoice. If payment is made within 14 days of the invoice date, we will grant 2% discount provided that payment is received within the required period and that all outstanding invoices have been settled or are settled at the same time.
5. Part invoices shall be presented for part deliveries. Payment terms shall run separately for each part invoice.
6. If the Purchaser is in default of payment, we are entitled to charge default interest in the amount of 8 percentage points above the base rate. Interest will be set higher or lower if we can prove a charge with a higher interest rate or if the Purchaser proves a lesser burden. If we can prove a higher default damage, we are entitled to assert this.



7. We only accept drafts or cheques in payment and not in lieu of payment after separate agreement. Our account is not settled until the date on which the funds are available to us without having to make allowance for charge-back claims. Collection charges, discount charges or bill charges including interest shall in all cases be borne by the Purchaser and are payable immediately.
8. The Purchaser is entitled to offset only if its counter-claims have been legally established, are undisputed or have been acknowledged by us. The Purchaser is only entitled to exercise a right of retention to the extent that its counter-claim is based on the same contractual relationship.

Section 5: Delivery Dates

1. Information regarding delivery periods is non-binding unless the delivery date has been expressly agreed as “binding”.
2. The delivery period shall commence with the date of confirmation of order but not, however, prior to provision of items required to be furnished by the Purchaser, i.e. supporting documentation, official approvals and releases, as well as receipt of any agreed payment, opening of any letter of credit required or evidence of arrangement of any collateral agreed.
3. The delivery period shall be deemed met if the goods have left the Nufringen warehouse facility within the delivery period.
4. Should any unforeseen impediments outside our control arise which despite the requisite care required given the particular circumstances of the case we are not in a position to avert – irrespective of whether the said impediments occur with us or at subcontractors – including *force majeure* (e.g. war or natural catastrophe) or delays in the supply of essential raw materials or other circumstances for which we are not responsible – we are entitled to withdraw from the supply contract either wholly or in part or alternatively to extend the delivery period by the duration of the impediment. The same rights shall apply to us in case of strikes and lockouts at our premises or those of our upstream suppliers. We will immediately notify our customers of any such circumstances.
5. In the event of delay in delivery the Purchaser may, following the expiry of an appropriate period of grace to no effect, withdraw from the Contract. A period of 14 days shall be deemed appropriate, and in the case of special custom-made products this shall be a minimum of one month. Delayed delivery shall equate to impossibility if delivery does not follow after one



month (or six weeks in the case of special custom-made products). Claims for damages (including any consequential loss) shall be excluded irrespective of Para. 6; the same shall apply in the case of reimbursement of expenses.

6. The liability disclaimer provision under Para. 5 shall not apply if any exclusion or restriction of liability is agreed in respect of injury to life, physical injury or damage to health which is due to intentional or negligent dereliction of duty on the part of the user or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of the user; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional or grossly negligent dereliction of duty on the part of any legal representative or vicarious agent of the user. If we culpably infringe any essential contractual obligation or any “cardinal obligation”, liability shall not be excluded but shall be limited to typical foreseeable contractual damage. In the event of a delay in delivery, the extent of our liability for damages shall be limited to maximum 30% of the agreed net purchasing price of the delivery item in question. In the event of reimbursement of expenses the above shall apply accordingly.
7. If any commercial fixed date transaction has been agreed, the liability limitations arising from Para. 5 and Para. 6 shall not apply; the same applies if the Purchaser is in a position to claim that as a consequence of the delay for which we are responsible its interest in performance of the Contract ceases to apply.
8. In the case of call orders, calls shall be notified to us in a timely manner to enable orderly manufacture and supply and at least six weeks prior to the desired delivery date. Call orders must be called forward within 12 months from the date of order if no other fixed deadlines have been agreed. If a call does not follow or not completely within 12 months from the date of order or on the agreed call terms, the Purchaser shall be deemed in default of acceptance.
9. Should the Purchaser fall into acceptance arrears or infringe duties of cooperation, we are entitled to claim compensation for loss incurred by us including any additional expenses. In such an event, the risk of accidental destruction or loss or accidental deterioration of the item of purchase shall transfer to the Purchaser if the latter is in default of acceptance.



Section 6: Transfer of Risk – Packaging Costs

1. In case of an obligation to collect, the risk shall transfer to the Purchaser upon handover to the Purchaser. The same shall apply as of surrender to the transport person in case of an obligation to dispatch what is owed. In the case of an obligation to receive the goods, the risk shall transfer to the Purchaser upon the goods leaving the premises. This shall also apply in the case of part deliveries or if the Supplier exceptionally undertakes other services, e.g. free delivery, installation or assembly.
2. The Purchaser may not refuse acceptance of any deliveries due to minor defects.
3. If dispatch is delayed as a result of circumstances for which we are not responsible, the risk shall be transferred to the Purchaser on the day on which notification is given that said goods are ready for dispatch.
4. Transportation and all other packaging shall not be returned; pallets are excluded. The Purchaser undertakes to arrange disposal of packaging materials at its own cost.
5. If the Purchaser expressly wishes, we shall cover delivery by transport insurance; costs in this regard shall be borne by the Purchaser.

Section 7: Guarantee

We assume liability for defects of the delivery if the Purchaser has met its obligation under Section 377 of the German Commercial Code (HGB) to inspect and submit complaints upon receipt of the goods in a timely manner, as follows:

1. Claims for material defects shall lapse one year following delivery of the purchased item. This does not apply as far as the law according to Sections 438 Para. 1 No. 2 (building structures and components for structures), 479 Para. 1 (claims of recourse) and 634a Para. 1 No. 2 (construction defects) of the German Civil Code (BGB) provides longer periods, or in cases of injury to life, body or health; in the event of an intentional or grossly negligent violation of duty on our part or in case of fraudulent concealment of a defect. The legal rules regarding expiry suspension, interruption and restart of the limitation period remain unaffected.
2. In the event of a defect of the purchased item, we are entitled to decide between rectification and replacement at our own discretion (supplementary performance).



Should one of or both forms of this supplementary performance prove impossible or disproportionate, we are entitled to refuse them. We may refuse supplementary performance for as long as the Purchaser fails to meet its payment obligations towards us to an extent equating to the fault-free portion of the goods or services.

3. Should the supplementary performance referred to in Para. 2 be impossible or should it fail, the Purchaser shall have the optional right – notwithstanding any claims for damages pursuant to Section 9 – to either reduce the purchase price accordingly or to rescind the Contract according to the statutory provisions; this applies in particular in case of culpable delay or refusal of supplementary performance or if this fails for the second time.
4. Furthermore, the provisions of Section 9 (Other Claims for Damages) shall apply in respect of claims for damages. Any other or additional claims of the Purchaser against the Supplier and its vicarious agents exceeding the claims provided for in this Paragraph are excluded.
5. The above provisions also apply in the case of delivery of another item or a lesser quantity.
6. Warranty shall be excluded in the case of merely minor deviation from the agreed quality; of only irrelevant impairment of the usability; of natural wear and tear or damage that occurred after the passing of risk due to improper or careless handling, excessive use, unsuitable means of operation or due to special external influences that are not included under the terms of the Contract. If the Purchaser has carried out improper modifications or repair work, any claims of defects for such work and the results thereof shall be excluded.
7. Claims by the the Purchaser relating to the expenditure incurred for the purpose of supplementary performance; especially transport costs, errand, work and material costs; are excluded, in as far as such expenditure increases as a result of the delivery object having been transported to a location other than the Purchaser's establishment afterwards, unless this is in compliance with the goods' intended use.
8. Claims for recourse on part of the Purchaser against the Supplier in accordance with Section 478 of the German Civil Code (BGB) (Recourse of the Contractor) only exist in as far as the Purchaser has not reached agreements beyond the legal claims for defects with its customers. The scope of the claim for recourse on part of the Purchaser against the Supplier



according to Section 478 Para. 2 of the German Civil Code (BGB) is also subject to No. 7 accordingly.

Section 8: Liability for Collateral Obligations

If through any fault on our part the object supplied cannot be used as stated under the terms of the Contract or if damage occurs as a consequence of omitted or faulty implementation of suggestions and consultations, as well as of other contractual obligations, prior to and subsequent to conclusion of the Contract, the provisions of Sections 7 and 9 shall apply accordingly to the exclusion of further claims on the part of the Purchaser.

Section 9: Withdrawal by the Purchaser and other Claims for Damages

1. The following provisions shall apply in the event of infringements over and above liability for defects and shall neither exclude nor limit the statutory right of withdrawal.
Similarly, lawful or contractual rights and claims due to us shall be neither excluded nor limited.
2. The Purchaser may withdraw from the Contract if the overall performance ultimately becomes impossible; the same shall apply in the event of inability.
The Purchaser may also withdraw from the entire Contract if in the event of an order for similar objects implementation of part of the supply is impossible in terms of numerical quantity due to our responsibility and if it has no interest in partial supply; if this is not the case, the Purchaser may abate the consideration accordingly; the right of withdrawal shall not apply in the case of immaterial infringement of obligation.
3. Should there be any delay in performance and provided the Purchaser grants us an appropriate period to complete performance following justification of the delay and should the said period fail to be observed, the Purchaser shall be entitled to withdraw.
If, prior to delivery, the Purchaser requires an in any aspect alternative execution of the delivery item, the delivery period shall be interrupted until the date of agreement regarding execution and, if necessary, extended by the time necessary for alternative execution.
4. Withdrawal shall be excluded if the Purchaser is solely or to a large extent predominantly responsible for the circumstance entitling it to withdrawal or



if the circumstance for which we are responsible occurs at the point in time of default in acceptance on the part of the Purchaser. In the event of impossibility, we retain in the above cases our claim to consideration as defined in Section 326 Para. II of the German Civil Code (BGB).

5. Claims for damages and indemnity by the Purchaser (hereinafter referred to as Claims for Damages), based on whatever legal reason, especially resulting from breaching obligations arising from the contractual obligations or any other tort liability, shall be excluded. This applies in particular to any claims based on damages not affecting the object of purchase, as well as to claims for damages due to loss of profit; this comprises any claims not resulting from a defect in the object of purchase.
6. This shall not apply if liability is mandatory, e.g. according to the German Product Liability Act; in cases of intent and gross negligence; in cases of injury to life, body or health and in cases resulting from the breach of major contractual obligations. The claim for damages for the breach of material contractual obligations or “cardinal obligations”, however, is limited to the foreseeable damage typical for the Contract, unless in the case of intent or gross negligence, or the liability is in effect because of injury to life, body and health. The above rulings do not constitute any change in the burden of proof to the disadvantage of the Purchaser.
7. If the Purchaser is legally entitled to Claims for Damages in accordance with this paragraph, these will fall under the statute of limitation when the valid statute of limitation for claims of damages pursuant to Section 7 No.1 expires. In the case of Claims for Damages in accordance with the German Product Liability Act, the legal provisions related to limitation periods shall apply.

Section 10: Retention of Title

1. We shall retain ownership of the item of purchase until receipt of all payments due as a result of the delivery agreement and any future accounts payable arising as a result of the business relations. Payment by cheque/bill of exchange shall be deemed to have been made only once the Purchaser has honoured the bill it has accepted, not as soon as the cheque is cashed.
2. In the event of a breach of contract on the part of the Purchaser, particularly default of payment, we are entitled to take back the item of purchase. The Purchaser shall already approve a recovery of the goods in this case.



The recovery shall be considered as a termination of the Contract only if explicitly stated by us. The Purchaser shall bear any costs (particularly transport costs) incurred by us resulting from the recovery of the goods. Furthermore, we are entitled to prohibit the Purchaser from selling or processing the purchased goods in which title is reserved and to revoke the direct debit authorisation (Section 10 Para. 5). The Purchaser may demand the delivery of goods recovered without an express notice of withdrawal only once the purchase price and all costs have been fully paid.

3. The Purchaser shall exercise due care in handling the item of purchase in which title is reserved. In particular, the Purchaser undertakes to insure it against damage by fire, water and theft at new value, at its own cost. As far as maintenance and inspection work is required, the Purchaser must carry this work out on time and at its own expense.
4. In the event of seizure or any other third-party interventions in our goods in which title is reserved, the Purchaser must inform us promptly in writing. In the event that any such third party is not in a position to reimburse the cost of proceedings incurred by us both in and out of court in accordance with Section 771 of the German Code of Civil Procedure (ZPO), the Purchaser shall be liable for our loss.
5. The Purchaser is entitled to resell the item of purchase subject to retention of title in the ordinary course of business, unless it is in default of payment or has ceased payments. It shall, however, transfer to us all rights against its customers, together with all auxiliary rights, securities and retentions of title, in particular accounts receivable equivalent to the final invoice amount (including tax), accrued by it against its purchaser or third party as a result of the resale, and this shall apply regardless of whether or not the item of purchase was resold without or after processing. Even after assignment, the Purchaser is to be entitled to collect this claim. Our authority to collect the claim ourselves remains unaffected. However, we will not collect the claim providing the Purchaser meets its payment liabilities from the subsequent sale, is not in delay with payment and in particular no application for opening of an insolvency process has been made, or there has been a notice to suspend payment issued. If this is the case, we may require that the Purchaser shall notify us of the claims assigned to it and of related debtors plus all information necessary for collection and surrender to us all associated documentation and disclose the



said assignment to its debtors. In the event of breach of contract (default on payment in particular), we may revoke the Purchaser's authorization to collect payments.

6. Any processing or conversion of the item of purchase by the Purchaser shall always be undertaken on our behalf. Should the item of purchase be processed with items that do not belong to us, then we acquire joint ownership in the new item in proportion to the ratio of the value of the item of purchase to the other items used at the time of processing. As for the rest, the provisions applicable to the item of purchase delivered conditionally shall also apply to the item created by means of processing.
7. Should the item of purchase be inseparably mixed with items that do not belong to us, then we acquire joint ownership in the new item in proportion to the ratio of the value of the item of purchase to the other mixed items at the time of mixing. If mixing is carried out in such a way that the item of the Purchaser can be regarded as the main item, it is agreed that the Purchaser shall grant us proportionate joint ownership. The Purchaser shall store the sole or joint property produced in this manner for us.
8. We undertake to release the securities due to us upon the Purchaser's request to the extent that their realisable value exceeds the claim secured by 20% or more; the choice of the securities is at our discretion.
9. Exercise of retention of title in case of default or risk, as well as the seizure of the delivery item by us, shall be deemed as termination of the Contract.

Section 11: Collateral in Case of Delivery Abroad

1. If in the case of export deliveries, we are required to carry out certain measures in the importing country in order for the retention of title or other rights as described in the preceding paragraph to be effective, the Purchaser must notify us accordingly and carry out such measures at its own cost.
2. If the law of the importing country does not permit retention of title, but allows the Supplier to reserve other rights as to the delivery item, we may exercise all such rights. Insofar as an equivalent guarantee for our claims on the Purchaser is not achieved in this way, the Purchaser is obliged to provide us with other security for the goods supplied or other collateral at its own cost.



Section 12: Place of Performance – Legal Venue – Choice of Law

1. Unless otherwise stated in the confirmation of order our place of performance is our registered office.
2. The legal venue is Stuttgart, Germany, in all disputes arising from the contractual relationship. We are also entitled to file suit at the Purchaser's registered office.
3. The law of the Federal Republic of Germany shall apply to the entire business relationship. The UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. Please note that the data relating to the business relationship or in connection with the latter, whether it comes from the Purchaser itself or from third parties, is processed in the sense of the German Federal Data Protection Act.

As of August 2014