

## **General Terms and Conditions of Neoplastik GmbH**

### **§ 1 General**

(1) Our Terms and Conditions apply exclusively; we do not recognise Terms and Conditions of the customer which oppose or deviate from our Terms and Conditions unless we have expressly agreed to their validity in writing.

(2) All agreements which have been made between us and the customer for the purpose of carrying out the contract are to be set down in writing in this contract; this also applies for a waiver of this requirement of the written form.

(3) Insofar as the customer is a company, the General Terms and Conditions also apply for future transactions with the customer.

### **§ 2 Offers, Delivery deadlines**

(1) Offers remain subject to change. The Seller is obligated to submit a binding statement in the contract of sale upon an order at the latest within 5 working days.

(2) Documents in prospectuses, catalogues, price lists or belonging to the offer contain information, drawings, illustrations and descriptions of services are approximate values common to the industry, unless they are expressly described as binding in the order confirmation. Changes in construction and form to the object of the delivery remain reserved insofar as the changes are reasonable for the Purchaser.

(3) If a material change in particular cost factors – wages, packaging material or freight – arises between the conclusion of the contract and delivery, the agreed price can be adjusted according to the influence of the decisive cost factors by a suitable extent (maximum 2 %). Price changes in the case of contracts with users are only permissible if there are more than four months between the conclusion of the contract and the agreed delivery date. The Purchaser has the right to rescind the contract in the case of increases in prices.

(4) Delivery deadlines apply subject to correct and timely delivery by our supplier if the Seller has concluded a covering transaction. The Seller shall not be released from the obligation to observe the delivery deadline if he is responsible for the failure of delivery through his suppliers. Delivery deadlines promised in writing by the Seller are binding. The delivery deadline begins with the day of dispatch (= date) in the order confirmation. It is considered to have been adhered to if the goods have left the factory/warehouse at the agreed time or the Purchaser is informed about readiness for dispatch in the case of a shipping order. In the case of delays in delivery, a period of grace is to be set. Fundamentally, a period of grace of a quarter of the agreed delivery period is considered suitable. The period of grace begins to run at the end of the delivery deadline.

(5) The Seller does not promise qualities solely through the transfer of models and samples.

(6) Packaging costs, rental and deposit fees and charges for wear for packaging material (bottles, pallets, rail containers and others) are carried by the Purchaser. The amount of the costs arises from the particular valid price list.

### **§ 3 Delivery, delay and impossibility**

(1) The Purchaser carries the additional costs in the case of subsequent delivery instructions requested by the Purchaser which differ from the purchase contract.

(2) Insurance shall only be concluded on request and at the expense of the Purchaser.

(3) If a determined delivery date is agreed for the delivery by date and hour, each hour (= 60 minutes) of waiting time going beyond this shall be charged with lump sum damages of 60 euro for each hour started. The contract parties reserve the right to claim that lower damages were incurred.

(4) Labour disputes which the Seller is not responsible for or other unforeseeable extraordinary events which it is not responsible for, such as sovereign measures, etc. release the Seller for the duration of their effects or, in the case of impossibility, from the obligation to delivery entirely. The Purchaser has the right in the case of impossibility to rescind the contract without a period of notice.

(5) The Seller shall be free from its obligation to deliver if an application is made to open insolvency proceedings regarding the assets of the Purchaser.

(6) In the case of later amendments to the contract by the Purchaser which influence the delivery date, the delivery date can be extended to a suitable extent.

(7) Part deliveries are permissible to a reasonable extent.

(8) If the delivery has not been recalled six months after the conclusion of the contract, the Seller is entitled to rescind the contract if the Purchaser defaults and has been requested by the Seller without result to pick up the goods after setting a deadline with threat of rejection.

#### **§ 4 Limitation of liability**

(1) The Seller is liable for its own gross fault and that of its persons assisting in the performance of obligations and managing employees.

(2) The Seller is fully liable if the life, body or health of the Purchaser is injured in an attributable way.

(3) The Purchaser's claims arising from product liability remain unaffected.

(4) In the case of breach of material contract duties the Seller is liable for any culpable actions.

(5) In the case of breach of immaterial contract duties the Seller is not liable vis-à-vis companies for simply negligent actions. Likewise for simply negligent actions by its persons assisting in the performance of obligations. In the case of gross negligence by its persons assisting in the performance of obligations, the Seller is only liable if the damages were typical to the contract and foreseeable.

(6) Claims for compensation for damages by the Purchaser due to a defect prescribe after one year after delivery of the goods, unless the Seller is reproached as a fraud.

#### **§ 5 Payment**

(1) In the case of cash sales, the purchase price is payable immediately upon receipt of the goods without discount.

(2) Sale on deferred terms requires separate written agreement. In the case of guarantee of deferred terms, invoices are due 30 days after the date of the invoice without deduction. If the Seller has granted a sale on deferred terms on the invoices, it is agreed that the Purchaser defaults after the expiry of the payment date. Whether a payment is on time depends on the time the payment is successful.

(3) For discounts to be awarded it is required that the Purchaser's account has no invoices due for more than 30 days. Only the value of the goods without freight can be discounted. Unloading or respectively assembly costs and services cannot be discounted.

(4) Settling invoices by cheque or bill of exchange is carried out on account of performance as well as following agreement and under the requirement that it can be banked. Discount charges shall be charged on the day of maturity of the invoice amount. A guarantee for correct presentation of the bill of exchange and for raising protests shall be excluded. Discount, bill of exchange charges and costs are carried by the purchaser.

(5) The Seller is entitled to charge interest from the Purchaser without particular evidence as a lump sum for damages from the day of maturity onwards. The Purchaser reserves the right to claim that lower damages were incurred. At least the statutory interest is to be paid.

(6) In the case of threatened inability to pay (cf. § 18 Para. 2 “Insolvenzordnung” [German insolvency regulation]), the Seller is entitled to only carry out further deliveries against advance payment, to make all open, also deferred, invoice amounts immediately payable and to request cash payment or security payment against restoration as payment of drafts discounted.

(7) In the case of threatened inability to pay (cf. § 18 Para. 2 “Insolvenzordnung” [German insolvency regulation]), the Seller can request a suitable security up to the time of its payment within a suitable period or performance in the case of counter-performance. There is a material deterioration in the assets if the Purchaser’s commercial situation has become so difficult that there is justified reason to fear that the Purchaser will not fulfil a material part of his obligations. If the Purchaser does not or does not timeously fulfil the justified request from the Seller, the Seller can rescind the contract or demand compensation for damages for non-performance.

(8) The Purchaser is to check invoices and balance communications for correctness and completeness. Invoices from the Seller are considered to be accepted if they are not objected to within 30 days after the invoice date. This also applies for balance messages. The Seller shall inform the Purchaser, who is not a businessman, about this with every invoice or respectively balance message.

(9) The Purchaser relinquishes claims to a right of retention from other earlier or on-going transactions in the commercial relationship. If the Purchaser is a businessman in the sense of the “Handelsgesetzbuch” [German Commercial Code], offsetting counter-claims is only permissible insofar as these are determined without dispute or with the force of law.

(10) Payments only observe the deadline if they are received in the Seller’s account within the period.

## **§ 6 Transfer of risk, Reporting defects, Guarantee**

(1) The risk of the chance destruction and chance worsening of the goods is transferred to the Purchaser upon handing over, and upon handing over of the goods to the courier in the case of sale by delivery to a place other than the place of performance. If the goods are ready for shipping and the dispatch is delayed, or sending or respectively the acceptance is omitted for reasons which the Purchaser is responsible for, risk is transferred to it upon receipt by the Purchaser of the announcement of the readiness for dispatch.

(2) Companies must notify the Seller in writing about evident or respectively hidden defects discovered within a period of seven work days, users within a period of two months, from receipt of the goods, above all before processing or fitting. Receipt of the notification by the Seller is decisive. The company carries the full burden of proof for all claim requirements, in particular for the defect itself, for the time the defect was determined and for the timeousness of the report of the defect. The user carries the burden of proof for the time the defect is determined.

(3) Patent transport damages and shortfalls are to be notified by telephone immediately after handing over of the goods and are to be confirmed in writing. If delivery is by rail, using vehicles for commercial short and long distance hauling, or also through other carriers, the Purchaser is to observe the required formalities, e.g. recording facts for the rail authority vis-à-vis the freight carrier.

(4) In the case of timeous, justified reports of defects in title or material defects in the goods in the sense of §§ 434, 435 BGB [German Civil Code], the Seller is to repair or deliver a replacement, as it chooses, and to the exclusion of further guarantee

claims of the Purchaser. The Seller reserves the right to have the defective thing returned. The Seller can refuse the repair or respectively replacement delivery if they are connected with disproportionate costs. If the repair or replacement delivery fails, or if it is not performed in an appropriate period, or if it is refused, the Purchaser can request rescission of the contract or a cut in the payment (reduction). If a breach of contract is immaterial, in particular in the case of only immaterial defects, the customer does not however have a right of rescission.

(5) A reference to DIN standards fundamentally includes the detailed description of the goods and does not establish any promise from the Seller, unless a promise was expressly agreed.

(6) For second choice goods, features of the goods which led to the goods being qualified as second choice are not defects.

(7) The guarantee period amounts to 1 year for transactions with companies, unless the defect in the purchased thing arises for a thing which has been used according to its normal use, and this caused its defectiveness.

(8) In order to fulfil its guarantee duties, the Seller transfers its claims against suppliers to the Purchaser, also insofar as they go beyond the statutory guarantee provisions. If the Purchaser cannot enforce the guarantee claims assigned to it extrajudicially, the Seller's own liability is revived.

(9) The Seller is not obligated to exchange the goods. If goods are exchanged nonetheless, the Purchaser shall be charged with 15% of the corresponding invoice amount, plus value-added tax, as a lump-sum for the costs arising in connection with the further use, unless the seller proves a lower or respectively higher expenditure. In the case of special production and separate orders, there is no possibility to exchange.

## **§ 7 Reservations of title, Transfers**

(1) In the case of contracts with users, the Seller reserves the title in the delivered goods until full payment of the purchase price.

(2) In the case of contracts with companies the delivered goods remain the property of the seller as goods subject to reservation of title until payment of the purchase price and repayment of all existing debts from the business relationship and debts still to come into being in connection with the object of the purchase.

(3) Inserting individual debts in a current invoice or drawing a balance and its recognition do not lift the reservation of title. If a liability of the Seller is established in connection with the payment of the purchase price by the Purchaser by bill of exchange, the reservation of title does not expire before payment of the bill of exchange by the Purchaser.

(4) The Seller is entitled in the case of actions in breach of contract, in particular in the case of default on payment by the Purchaser, to rescind the contract and reclaim the goods subject to reservation of title. Claims for compensation for damages of the Seller remain reserved.

(5) The Purchaser is obligated to treat the goods subject to the reservation of title carefully. If maintenance and inspection works need to be carried out, the Purchaser is to carry these out in good time at its own cost.

(6) If goods subject to the reservation of title are made into a new moveable thing by the Purchaser, the processing is carried out for the Seller, without it being obligated for this. The new thing becomes the property of the Seller. In the case of mixing together with goods which do not belong to the Seller, the Seller acquires co-ownership in the new thing according to the ratio of the value of the goods subject to reservation of title to the other goods at the time of the mixing. If goods subject to reservation of title are not joined, mixed or combined with the goods not belonging to the Seller in accordance with § 947, 948 BGB [German Civil Code], the Seller becomes co-owner according to the statutory provisions. If the Seller acquires ownership with the connecting, mixing or combining, it from now already transfers co-ownership to the seller according to the ratio of the value of the goods subject to reservation of title to the goods at the time of the connecting, mixing or

combining. In these cases the Purchaser is to keep safe the thing which the Seller is the owner or co-owner of, which is also considered as goods subject to the reservation of title in the sense of the following provisions.

(7) If goods subject to reservation of title are sold by the Purchaser alone or together with goods not belonging to the Seller, the Purchaser from now assigns claims arising from the resale amounting to the value of the goods subject to reservation of title with all ancillary rights and priority above others; the Seller accepts the transfer. The value of the goods subject to reservation of title is the invoice amount plus a security surcharge of 10 %, which is however not taken into account insofar as rights of third parties stand in the way. The Seller reserves the right to collect the claims itself as soon as the Purchaser does not fulfil his payment obligations properly and defaults on payment.

(8) If the goods subject to reservation of title are co-owned by the Seller, the transfer of the claim extends to the amount which corresponds with the pro rata value of the Seller in co-ownership. Paragraph 1 Sentence 2 applies accordingly for the extended reservation of title; the advance transfer in accordance with Para. 3 Sentence 1 and 3 extends to the payment balance request.

(9) The Purchaser is entitled and authorised to resell, use or install the goods subject to reservation of title in the ordinary, proper course of business and only on the condition that the claims in the sense of Paras. 3, 4 and 5 are actually transferred to the Seller. Otherwise the Purchaser is not entitled to dispose of the goods subject to reservation of title, in particular to pledge or transfer by way of security. He is obligated to ensure the rights of the Seller on credit amounting to the purchase price claim in the case of resale of the goods subject to reservation of title.

(10) The Seller authorises the Purchaser with reservation of revocation to collect the claims assigned in accordance with Para. 3, 4 and 5. The Seller shall not make use of its own authorisation to collect as long as the Purchaser fulfils its payment obligations, also vis-à-vis third parties. On request from the Seller, the Purchaser is to name the debtor of the claims transferred, and to show him the assignment; the Seller is authorised to show the debtors the assignment itself.

(11) The Purchaser is to inform the Seller immediately about measures to enforce a writ by third parties in the goods subject to reservation of title or in the claims assigned, while handing over the documents necessary for the objection. This also applies for restrictions of any kind.

(12) With termination of payment, application or opening of insolvency proceedings or extrajudicial insolvency proceedings, the right to resell, of use or of installation of the goods subject to reservation of title and the authorisation to collect the claims transferred expire. The authorisation to collect also expires if a check or note of exchange bounces.

(13) The securities ordered for the Seller extend to those liabilities which are in the case of insolvency established by the liquidator unilaterally when opting for performance.

## **§ 8 Agreement to convey data**

We agree that our supplier credit agencies convey data regarding the recording, termination and payment experiences of this commercial relationship in accordance with § 29 BDSG [German federal law on data protection]. We can retain information regarding the data stored concerning us in accordance with § 34 BDSG.

## **§ 9 Rights in favour of the Seller in the case of counter-claims by the Purchaser**

(1) The Purchaser and the Seller agree that the Seller acquires a right of lien in present and future claims of the Purchaser vis-à-vis the Seller for disputed credit balances (cooperative shares, dividends or cooperative reimbursement) and premiums.

(2) The right of lien serves as security for all existing and future claims of the seller against the Purchaser from the commercial relationship.

(3) If the Purchaser is a member and has been excluded because of insolvency or the opening of insolvency proceedings, the Seller in the dispute can offset the claims it is entitled to against the member against the credits to be paid out and/or a claim for repayment.

**§ 10 Place of performance, court of jurisdiction, partial invalidity**

(1) If the Purchaser is a businessman in the sense of the HGB [German Commercial Code], the place of performance for all obligations from the contractual relationship is the Seller's head office.

(2) If the Purchaser is a businessman in the sense of the HGB, the court of jurisdiction is Braunschweig for all claims of the 2 contract parties, also for bill of exchange and cheque claims. This does not apply for claims for which the law provides an exclusive jurisdiction.

(3) German law applies exclusively. General Terms and Conditions of Neoplastik GmbH

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