

## **General Terms and Conditions of Purchase of Nicolay GmbH (Status 05/2015)**

### **I. Validity / defence clause**

1. These conditions apply to entrepreneurs (§ 14 BGB), legal entities under public law and special funds under public law.
2. Unless otherwise agreed in individual cases, the following terms and conditions shall apply exclusively to all our orders – including future orders of the same type – without us having to refer to them in each individual case. Any deviating, conflicting or additional terms and conditions of the supplier shall only become part of the contract to the extent that we have expressly agreed to their validity in writing. The unconditional acceptance of deliveries does not constitute consent. Individual agreements made in individual cases take precedence over our conditions if they have been made in writing or confirmed by us in writing.
3. References to the validity of legal regulations have only a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these Terms and Conditions of Purchase.

### **II. Conclusion of Contract**

1. Offers of the supplier are non-binding and free of charge for us.
2. Our oral or telephone orders, additions and changes to an order require our written confirmation.
3. Unless otherwise stated in our orders, we shall be bound to our order for one week from the order date. Our right to cancel the order until receipt of a written confirmation of acceptance by the supplier with the same content as our order remains unaffected by this. The receipt of the declaration of acceptance by us shall be decisive for timely acceptance.
4. Changes and additions to a contract require our written confirmation.

### **III. Delivery item / Quality requirements**

1. Our written order as well as any specifications and production documents (drawings, samples etc.) handed over by us or the specifications and production documents handed over to us by the supplier and confirmed by us in writing shall be decisive for the content, type and scope of the delivery. The supplier's obligation to check all order and other contractual documents for completeness, correctness and suitability for the intended purpose and to inform us immediately in writing of any discrepancies/errors as well as the supplier's own responsibility for the execution remain unaffected by this.
2. A complete documentation (e.g. preferential supplier's declaration, operating and maintenance instructions) must be handed over with the delivery items.
3. If delivery items are manufactured according to our specifications, the delivery items shall be accepted by us – even if this has not been expressly agreed. Acceptance shall take place as soon as a functional test has shown that the services are free of defects or have minor defects at best. The acceptance is recorded in a protocol to be signed by both parties.
4. Insofar as the supplier provides services on our company premises, he shall comply with our relevant regulations (e.g. house rules, safety regulations), which we shall make available to him on request. The storage of material for services may only be carried out after prior consultation with us; the workplaces must be kept in an accident-proof condition at all times and left tidy and clean every day after the end of work.
5. If the delivery item consists entirely or partially of software, the supplier grants us a non-exclusive, transferable, temporally and locally unlimited and irrevocable right of use of the software. We are generally entitled to duplicate the software – insofar as this is necessary for use in accordance with the contract. The supplier shall supply printable documentation in German. We may require the supplier to conclude a standard maintenance contract and to deposit the source code (e.g. with TÜV Süd) at our expense.
6. On request, the supplier must inform us of his sub-suppliers. We may reject a sub-supplier for good cause; if this results in postponements or changes in costs, we shall consult with the supplier.
7. For a period of at least ten years after delivery, the supplier shall supply us with spare parts and components for the goods delivered to us at normal market prices. If the supplier intends to discontinue production of these spare parts and components, he shall inform us – without prejudice to the obligation

under sentence 1 – at least three months prior to discontinuation of production.

8. The supplier is not entitled to have the service owed by him performed by third parties (e.g. subcontractors) without our prior written consent. The supplier bears the procurement risk for his services, unless it is a custom-made product.
9. All items delivered must be manufactured with materials and tools of the best suitability and in perfect condition which comply with our published technical specifications and the applicable ISO standards, European and German standards, statutory regulations (in particular in the Equipment and Product Safety Act), trade association guidelines and the like. These are also the quality standard of the delivery item without express agreement.
10. Acceptance of packaged goods does not constitute acceptance of the delivery item as performance. In any case we reserve the right to inspect the goods after delivery.
11. We are entitled, within the scope of what is reasonable, to demand changes in the design and manufacture of the delivery item in the event of corresponding changes in prices and delivery times.
12. The supplier is obliged to constantly check and improve the quality of the delivery item. At the supplier's request, we are prepared to discuss the type and scope of testing, testing equipment and methods with him and, taking into account knowledge, experience and the state of the art, to agree them in writing. Samples must be submitted and accepted by us prior to series deliveries. The obligation to check the quality includes in the same way provisions in accordance with Clause VIII.3 as long as they are in the possession of the supplier. If the supplier is only an intermediary for goods, he is obliged to inspect the goods for defects before handing them over to us.
13. The supplier shall inform us of any changes, changes in his production processes, the production location, the materials used (including recipes, etc.) and the upstream suppliers.

#### **IV. Lead time**

1. The delivery time stated by us in the order is binding. Periods begin with our written order. Decisive for compliance with the delivery time is the receipt of the delivery item by us or the agreed place of receipt. Unless otherwise agreed in writing, the supplier shall deliver on the agreed delivery date, in the case of delivery periods within the delivery period, in the case of call orders,

at the latest within one week after receipt of the call. Compliance with the delivery time is so essential to the contract that the continued existence of our interest in receiving the delivery is tied to compliance with it.

2. Partial deliveries by the supplier are only permissible with our prior written consent.
3. The supplier is obliged to inform us immediately in writing if he is unlikely to be able to meet agreed delivery times – for whatever reasons. If the supplier is in default, we have the statutory claims and rights. Delay in delivery also entitles us to demand 1% of the net price of the entire order, but no more than 5% of the net price of the entire order, as a contractual penalty for each complete week of exceeding the delivery time. This shall apply mutatis mutandis if there is a delay in partial deliveries. Claims for damages remain unaffected by this. Any contractual penalty paid shall be offset against a claim for damages. If we accept the delayed performance, we must claim the contractual penalty at the latest with the final payment.

## **V. Shipment / Acceptance**

1. The dispatch takes place at the supplier's risk and free domicile within Germany to the place specified in the order. This also applies to possible returns. The supplier is liable for compliance with the specified shipping instructions.
2. The supplier shall use packaging that is as environmentally friendly as possible. Upon our request, he shall take back packaging free of charge for us from the agreed place of receipt.
3. The risk shall pass to us upon delivery of the delivery item to us or the agreed place of receipt. In the case of machines and technical equipment and in the event of an agreed functional testing/acceptance, the risk shall not pass to us until we have confirmed in writing that the functional testing/acceptance has gone smoothly.
4. The supplier must enclose a delivery note with each delivery in which our order number, article number, the quantity, the place of delivery and the description of the goods are stated in our order. Otherwise we are entitled to refuse acceptance without the supplier's claims arising therefrom. Any costs resulting from this shall be borne by the supplier.
5. The statutory provisions shall apply to the occurrence of our default in acceptance. However, the supplier must also expressly offer his services to us if a certain 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 can demand reimbursement of his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract concerns an unjustifiable item to be produced by the seller (individual production), the seller is only entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

## **VI. Prices / Invoicing / Payment**

1. The price stated in the order is binding and is understood as a fixed price free works plus statutory value added tax including all ancillary services and costs (e.g. assembly, installation, packaging, transport, transport insurance).
2. If we see significant changes in the market situation or if there is a significant drop in the market prices of our products, the supplier will negotiate an adjustment of the prices with us. If the negotiations fail, we may terminate existing contracts (in particular framework agreements) with a period of notice which is to take due account of the interests of both parties. In this case, the supplier can only charge us the costs actually incurred by him for material that cannot be used elsewhere. We also have a corresponding right of termination if the supplier's prices are above the market level or at least 3% above the prices of a comparable competitor and he cannot offer us more competitive prices within one month of our written request.
3. Invoices are to be handed over to us in one copy after receipt of the delivery item in accordance with the statutory provisions, stating the packaging number, number of packages and the number of units of delivery. For each item of the invoice, our article number and the order number must be indicated, provided that one is included in our order. If the invoice refers to goods from different orders, it must be stated which order was executed with the delivery.
4. We pay – at our discretion – within 14 days after receipt of invoice with 3% discount or within 30 days without deduction. We are entitled to pay by cheque or bank transfer. In any case, we are only in default by a written reminder.
5. We are entitled to set-off and retention rights as well as the plea of non-performance of the contract to the statutory extent, in particular we may withhold due payments as long as we are entitled to claims from incomplete or defective deliveries against the supplier.

6. The supplier may not assign the rights and claims to which he is entitled against us in whole or in part to third parties without our prior written consent (§ 354a HGB remains unaffected by this, however).

## **VII. Inspection / Defects of the delivery item**

1. The statutory provisions shall apply to our rights in the event of material defects and defects in title of 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 supplier, unless otherwise specified below.
2. We will randomly inspect the delivery items after receipt in the ordinary course of business and thus satisfy our commercial obligation to inspect them. If further inspections become necessary due to defects found in the random samples, the supplier shall reimburse us for the expenses incurred.
3. If a delay in remedying defects threatens to cause considerable damage to us or our customers, we shall be entitled to remedy the defects ourselves or by third parties at the supplier's expense, even without prior request to the supplier. We will inform the supplier of this as early as possible.
4. The costs of subsequent performance (§ 439 para.2 BGB) also include removal and replacement costs, costs of defect search and sorting costs.
5. The supplier shall bear his expenses for examination of a defect report and rectification even if there was no defect; we shall otherwise only be liable for damages in the event of an unjustified request to rectify the defect if we have recognized or grossly negligently failed to recognize that there is no defect.
6. The period of limitation for our claims due to a material defect is 2 years, due to a defect in title 4 years from delivery or acceptance. Longer limitation periods due to other claims which are not based on a defect of the delivery item itself shall remain unaffected. The statutory limitation period for claims for restitution in rem (§ 438 Para.1 No.1 BGB) shall also remain unaffected.
7. Defective parts of the delivery item remain at our disposal until replaced; they become the property of the supplier through replacement.

## **VIII. Security rights / Materials provided / Property rights**

1. The supplier undertakes to release any security interests granted to him by us to the extent that their value exceeds the claim to be secured by more than 10%.

2. We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, design specifications, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and are to be returned to us after completion of the contract. The documents are to be kept secret from third parties, even after termination of the contract. The obligation of secrecy shall not expire until and insofar as the knowledge contained in the documents provided has become generally known.
- 3. Tools, devices, models and other materials which are made available or otherwise provided by us to the supplier or which are delivered directly to the supplier on our behalf (collectively "provisions") shall remain our property. They may not be sold to third parties, assigned as security, pledged, passed on or used for third parties or made accessible to them without our consent. Supplies must be insured by the supplier against all usual risks at its own expense and stored as our property and separately from the same or similar items owned by third parties or by the supplier. The supplier may only use materials provided for the production of our order and must surrender them to us immediately upon request. The supplier shall also impose these obligations on his vicarious agents.
4. The supplier must inform us immediately of any imminent seizure of materials provided or any other impairment of our rights, such as loss or damage to materials provided. He is obligated to segregate provisions.
5. Any processing, mixing or combination of materials provided by the supplier shall be carried out on our behalf. If in the event of processing, mixing or combination with items of third parties their ownership rights remain, we shall acquire co-ownership of the new item in proportion to the value of our provision to the other items.
- 6. If, in connection with the execution of the order, improvements are made to materials provided by the supplier, we shall have a free, non-exclusive right of use for our own use, including this improvement and any industrial property rights thereto.
7. Any duplication of models, samples or other documents made available to the supplier by us or such documents that are manufactured by the supplier according to our specifications is only permitted insofar as this is necessary for processing the offer/execution of the delivery. Insofar as in this case the supplier leaves such documents to a sub-supplier, the supplier must impose a corresponding written obligation on the sub-supplier before surrendering them and present them to us on request.



8. Items manufactured according to our information may not be offered/delivered to third parties without our consent; this obligation also continues after termination of the business relationship. If improvements are made to the supplier on the basis of our production documents, we shall have a non-exclusive right of use free of charge for our own use even after this improvement and any industrial property rights thereto.
9. We object to all forms of extended or prolonged retention of title, so that any agreed retention of title only applies until the goods delivered to us have been paid for and only for these.

### **IX. Non-disclosure**

1. The supplier is obliged to treat as a trade secret all commercial and technical details which are not obvious and which become known to him through the business relationship with us, as long as these do not become generally known. Supplier's vicarious agents (including employees) shall be obligated accordingly in writing; the obligations shall be submitted to us on request.
2. The supplier is only entitled to refer to an existing business relationship with us for advertising purposes with our prior written consent.
3. The publication of products manufactured on our behalf and according to our specifications for purposes of the supplier's own advertising requires our prior written consent.

### **X. Product liability**

1. If the supplier is responsible for a product defect, he must indemnify us against claims of third parties to the extent that the cause lies within his sphere of control and organisation and he is liable himself in the external relationship.
2. In this context, the supplier is also obliged to reimburse us for any expenses in accordance with §§683, 670 BGB which result from or in connection with a recall action carried out by us or our customer, insofar as we or our customer were obliged to a recall action or this was appropriate. We will inform the supplier of the content and scope of the recall measures to be carried out – as far as possible and reasonable – and give him the opportunity to comment.
3. If claims are asserted against us by third parties in Germany or abroad on account of a product defect for which the supplier is responsible, the supplier shall be liable to us accordingly. The same rules of burden of proof shall apply



to the relationship between us and the supplier as to the relationship between us and the third party.

4. The supplier undertakes to maintain product liability insurance with a lump sum coverage of 10 million EURO per personal injury/property damage. The insurance policies must be submitted to us on request. Our claims for compensation remain unaffected.

## **XI. Final provisions**

1. The agreed written form shall also be maintained by e-mail and fax.
2. Place of performance is our registered office. The exclusive place of jurisdiction is the court responsible for our registered office; however, we are also entitled to assert claims at the supplier's registered office.
3. German law shall apply, including the UN Convention on Contracts for the International Sale of Goods (CISG).
4. The supplier's data required within the scope of contract processing, in particular name, address and account details, shall be stored and processed.
5. Should one or more of these conditions be or become invalid, this shall not affect the validity of the remaining conditions.