

General Terms and Conditions of Sale and Delivery of NATUS GmbH & Co. KG

for exclusive use vis-à-vis entrepreneurs, legal entities under public law and special assets under public law

I. General provisions

These General Terms and Conditions of Sale and Delivery (GTC) apply to all our deliveries, services and offers. These GTC are an integral part of all contracts that we conclude with our customers regarding our deliveries and services.

These GTC shall also apply to all future deliveries, services and offers to the customer, even if they are not agreed upon again separately.

Unilateral amendments to these GTC made by us during a contractual relationship shall be notified to the customer in writing. The amendments shall be deemed to have been approved if the customer does not object in writing. The objection must reach us within six weeks after the customer has received the notification.

Terms and Conditions of the customer or third parties deviating from or supplementing these GTC shall not apply and shall only become an integral part of the contract if and to the extent that we have agreed to their applicability in text form. This shall also apply if we carry out deliveries and services without reservation in the knowledge of conflicting or deviating terms and conditions of the customer or third parties or if we refer to letters from the customer which contain or refer to such terms and conditions.

Amendments and/or changes to the contracts concluded between us and the customer on the basis of these GTC as well as these GTC itself must be made in text form in order to become effective. With the exception of managing directors and proxy holders, our employees are not entitled to make any verbal agreements that deviate from these terms.

Legally relevant declarations and notifications made or to be made to us by the customer after conclusion of the contract require text form in order to become effective.

Any verbal promises given by us prior to the conclusion of the contract and/or agreements made by the parties prior to the conclusion of the contract shall be replaced by the agreement made on the basis of these GTC, unless it is expressly stated that they are to remain binding in all cases.

II. Conclusion of a contract

Our offers are subject to confirmation and non-binding.

Orders placed by customer are binding and customer is bound to his offer for a period of 14 days from receipt of the order. During this time, we can accept customer's order by means of an order confirmation in text form or by delivery of the goods.

Our product descriptions, drawings and representations of the goods and products, information on technical data as well as other information provided by us on the goods or products and services are only indicative and approximate, unless the usability of the goods or services for the purpose of the contract does require exact conformity. These statements and representations are descriptions of the goods or services, but not guaranteed characteristics. Insofar as this does not impair the contractually stipulated usability of the goods or services, customary deviations and deviations due to legal regulations or technical improvements are permissible. It is also permissible to replace certain components with other, equivalent parts.

We reserve ownership, property rights and copyrights to all samples, calculations, models, offers, cost estimates and similar information of a physical or non-physical nature - including in electronic form. The customer shall not be entitled to make this information accessible to third parties without our prior written consent and shall return it to us free of charge or, at our discretion, destroy it if the contract is not concluded.

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III. Prices and Payments

Our prices are quoted ex works plus VAT, excluding packaging, transport, freight, container stowage costs and installation/commissioning, unless otherwise agreed. Any customs duties and/or other charges incurred shall be borne by the customer.

Unless otherwise agreed, payments are due within 14 days of receipt of our invoice by customer provided that all other contractual due date requirements are met.

The unreserved credit entry on our bank account is decisive for the timeliness of the payment.

Customer shall be in default with the expiry of the payment deadline described above. During the period of default, the invoice amount affected by the default shall be subject to interest at the statutory default interest rate. However, the assertion of further damages caused by delay remains reserved, even the claim for interest on maturity according to § 353 HGB (German Commercial Code) remains unaffected.

We are entitled to make a delivery partly or completely dependent on payment in advance; if we do so, we will declare the corresponding reservation with our order confirmation at the latest.

Customer shall only be entitled to rights of retention and set-off insofar as his counterclaims are undisputed or have been legally established by court. However, the customer's right to retain an appropriate part of the price in relation to the defect in the event of defective performance by us shall remain unaffected.

If we have taken over the commissioning, installation or assembly and if nothing else has been agreed upon, customer shall bear all necessary ancillary costs such as travel expenses, visa costs, costs for the transport of tools/testing equipment and personal luggage as well as allowances in addition to the agreed remuneration. If no payment for the commissioning, installation or assembly work has been agreed, our hourly rates valid at the time of performance shall apply, and we shall inform the customer of these rates at any time upon request.

We are entitled to charge appropriate instalments for completed partial performances (progress invoice). In case customer does not pay a due progress invoice or does not pay in time, we shall be entitled to make further fulfilment of the contract by us dependent on payment of the progress invoice or to withdraw from the contract if we have previously requested payment from the customer in writing within a reasonable period of time. The assertion of claims for expenses and damages shall remain unaffected.

If the contracting parties agree that securities (e.g. for down-payments, performance of the contract or liability for defects) are to be provided by us, we shall be entitled to use a surety from a bank or insurance company of our own choice for this purpose.

IV. Deliveries

Our deliveries are ex works (EXW Incoterms® 2020).

Insofar as we state periods or dates for the delivery, these are non-binding guideline values unless these are expressly described as binding or agreed between the parties as binding. If the dispatch of the goods to the customer has been agreed, the time of handover of the goods to the freight forwarder, carrier or any other third party commissioned with the transport is decisive for the compliance with of the delivery periods or delivery dates. In all other respects, the time at which we have notified the customer that the goods are ready for dispatch shall be decisive for adherence to delivery periods or delivery dates; to the extent that acceptance is required, this shall be the time at which we notify the customer of our readiness for acceptance.

All delivery dates and delivery periods are subject to proper and timely self-delivery, provided that we are not responsible for the delay or incorrectness of self-delivery and have concluded a congruent covering transaction in good time. We will inform the customer immediately if delays in delivery dates or delivery periods are imminent due to improper or late delivery to us and will inform customer of the expected new delivery time. If we are unable to deliver even within this new delivery period due to delays or incorrect self-supply for which we are not responsible, we shall be entitled to withdraw from the contract. If we make use of this right of withdrawal, we shall immediately refund the payment or other consideration already received from the customer.

We are entitled to make partial deliveries, provided that the customer can reasonably be expected to accept them, that the partial delivery does not involve any significant additional expenditure or additional costs which we do not bear, that the delivery of the remaining part of the goods is ensured and that a partial delivery is usable for the customer, taking into account the purpose of the contract.

We shall not be liable for delays in delivery or the impossibility of delivery caused by force majeure or other events not foreseeable and not attributable to us at the time of conclusion of the contract (e. g. industrial action, shortage of raw materials, breakdowns through no fault of our own). If delivery is made impossible or – by taking into account the value of the goods - unreasonably difficult for us due to such events or force majeure we shall be entitled to withdraw from the contract. If we are only temporarily prevented from delivering by such events or force majeure, the delivery dates or delivery periods shall be postponed by the period during which the impediment to performance exists, but plus a start-up period of one week. In this case, the customer is entitled to withdraw from the contract if the impediment to performance exists for longer than 90 days and he cannot be expected to accept such delayed delivery and he notifies us of this immediately in text form after we have informed him of the impediment to performance, which we are obliged to do immediately after it becomes apparent. The customer's right to withdraw from the contract in the event of impossibility of performance under the statutory conditions shall remain unaffected.

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We shall be exempted from our contractual obligation to deliver and/or perform if and to the extent that our delivery and performance is prohibited by national and/or international trade restrictions, embargoes, import or export embargoes or other official or general public measures, is made legally or factually impossible and/or unreasonably difficult. This shall also apply if such provisions and/or measures are adopted or take effect after the conclusion of the contract.

The statutory provisions shall apply to the existence of a delay in delivery on our part, however, the occurrence of a delay in delivery shall in any case require a reminder by the customer in text form, unless we have seriously and definitively refused delivery. In the event of a delay in delivery, the customer shall be entitled to liquidated damages in the amount of 0.3% for each completed calendar week of the delay, up to a maximum of 5% of the agreed net value of the delayed goods/services. Payment of such liquidated damages shall be customers final and conclusive compensation for delay. We reserve the right to prove that the customer has suffered no or less damage.

If our delivery is delayed for reasons for which the customer is responsible (for example, if the customer fails to cooperate or is late in performing a cooperation act owed by him) or if the customer is in default of acceptance, we shall be entitled to demand compensation from the customer for expenses and/or damages incurred by us as a result. We are therefore entitled to demand a lump-sum compensation of 0.25% of the value of the goods per calendar day from the customer, beginning with the day following the agreed delivery date or the notification of readiness for dispatch or acceptance by us, provided that no delivery date has been agreed, but not exceeding a total of 5% of the value of the goods. This lump-sum compensation does not apply, however, if the customer proves that we have actually suffered significantly less damage or no damage at all. Our further statutory rights as well as the proof of a higher damage remain unaffected. In any case, the lump-sum compensation is to be set off against our further claims.

If an acceptance has to take place, this must take place immediately on the date of acceptance, if such a date has not been agreed upon or if an agreed acceptance date cannot be met, the acceptance must take place immediately after our notification of readiness for acceptance. The customer is not entitled to refuse acceptance in the case of minor defects.

Unless otherwise agreed, the goods or services shall be deemed to have been accepted at the latest if

- the delivery or service (including assembly or installation, if owed) has been completed,
- we have informed the customer about the completion of the delivery or service, asked him for acceptance and pointed out the acceptance fiction according to this regulation of the GTC,

- 10 working days have elapsed since completion of the delivery or service or, if the customer has already used the delivery or service (for example, by putting it into operation), 5 working days since completion of the delivery or service and
- the customer has not refused acceptance during this period due to a material defect.

The risk of accidental loss and/or accidental deterioration of the goods shall pass to the customer upon completion of the delivery or service. If the dispatch of the goods has been agreed upon, the risk of accidental loss and/or accidental deterioration shall pass to the customer at the moment the goods, are handed over to the freight forwarder, carrier or any other person designated to carry out the dispatch. This shall also apply if partial deliveries are made or if we owe further services (e. g. commissioning or installation). Insofar as acceptance is required, the date of acceptance shall be decisive for the transfer of risk. If the dispatch or handover of the goods or acceptance is delayed due to circumstances caused by the customer, the risk shall pass to the customer after we have informed the customer that the goods or services are ready for dispatch or handover or acceptance.

We are entitled to engage subcontractors with the fulfilment of our existing contractual obligations vis-à-vis the customer.

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V. Retention of title

The goods shall remain our property until all our claims against the customer arising from the contract on which the delivery is based have been completely fulfilled.

The customer is obliged to treat the goods delivered to him under retention of title with care and to insure them at his own expense against fire and water damage as well as against theft at replacement value.

The customer may not pledge the goods delivered under retention of title to third parties or use them as security, as long as our claim secured by the retention of title has not been settled. If third parties seize the goods delivered under retention of title or if other third parties access these goods, the customer is obliged to inform this third party of our ownership and to inform us immediately in written form. Necessary costs which we have to bear in the context of the extrajudicial and judicial assertion of our property rights vis-à-vis the third party shall be reimbursed to us by the customer, insofar as these are not reimbursed by the third party.

We shall be entitled to take back the goods delivered under retention of title after we have set the customer a reasonable deadline for performance and this deadline has expired fruitlessly, if the customer fails to meet his payment obligations or does not pay on time. In this case, the customer shall bear the transport costs incurred for the return. If we take back goods delivered under retention of title, this shall constitute a withdrawal from the contract; this shall also apply if we seize the goods delivered under retention of title.

The customer may use, resell and/or process the goods delivered under retention of title in the ordinary course of business. The following shall apply in addition to this:

- Already now the customer assigns to us the claim resulting from the resale of the goods delivered under retention of title as well as those claims in relation to the goods delivered under retention of title which he is entitled to for other reasons against his customer or other third parties or which he will be entitled to in the future (e. g. claims from insurance benefits or unauthorized action), and we accept this assignment.
- The customer himself remains authorised to collect the aforementioned claims and we undertake not to collect these claims ourselves as long as the customer fulfills his contractual obligations towards us, in particular as long as he is not in default of payment, no application for insolvency proceedings is filed against the customer's assets and there are no other deficiencies in his ability to pay which endanger our claim for payment. If such a case arises, however, the customer is obliged to inform his debtors of the assignment and to name his debtors as well as to provide us with all information necessary for the collection of these assigned claims and to hand over the corresponding documents to us.

- Processing or transformation of the goods delivered to the customer under retention of title shall always be carried out on our behalf. If the goods delivered under retention of title are processed further with items that are not our property, we shall acquire co-ownership of the newly created item in the ratio of the value of the goods delivered to the customer under retention of title (invoice amount including value added tax) to the other processed items at the time of processing. The same shall apply to the new item created as a result of processing as to the goods delivered to the customer under retention of title.
- In the event of an inseparable connection or mixing of the goods delivered to the customer under retention of title with items that are not our property, we shall acquire co-ownership of the new item created by combining or mixing in the ratio of the value of the goods delivered under retention of title (invoice amount including value added tax) to the other combined or mixed items at the time of combining or mixing. If the connection or mixing is carried out in such a way that the object not owned by us is to be regarded as the main object, the customer already now transfers to us the proportionate co-ownership of the newly created object and we accept this transfer.
- If we acquire co-ownership or sole ownership of a new item, the customer shall hold this in safe custody for us. At the customer's request, we shall release securities of our choice if the realisable value of the securities exceeds our claims by more than 10%.

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VI. Warranty and warranty claims

The warranty period is 12 months.

The customer is obliged to examine the goods carefully immediately after delivery and to report defects immediately after their discovery in text form. In the case of goods intended for installation or other further processing, the inspection must always be carried out before installation or further processing. The goods shall be deemed to have been accepted by the customer with regard to obvious defects or such defects which would have been recognisable by an immediate and careful examination, if he does not give notice to us in text form about these defects within 5 working days after the passing of risk. With regard to other defects, the goods shall be deemed to have been approved by the customer if the customer does not notify the defect to us in text form within 5 working days after discovery of the defect. However, if the defect was already recognisable to the customer at an earlier point in time during normal use of the goods, this earlier point in time shall be decisive for the commencement of the complaint period.

Obviously recognizable transport damage must be noted by the customer directly on the delivery note and the acknowledgement of receipt of goods to the carrier.

If the goods or service is defective, we can choose the type of supplementary performance. The right to refuse subsequent performance in accordance with the statutory requirements shall remain unaffected. The subsequent performance owed by us does not include the removal of the defective item as well as the re-installation of a defect-free item if we were not originally obliged to install it.

We are entitled to make subsequent performance dependent on payment of the purchase price. However, the customer is entitled to retain a reasonable part of the price in relation to the defect.

If the goods or services are defective, we shall bear the costs of subsequent performance. If the customer's request for rectification of defects subsequently turns out to be unjustified, we can demand compensation from the customer for the costs incurred due to the unjustified request to remedy the defect.

If and insofar as the customer modifies the goods without our consent or has them modified by third parties and the remedy of defects is made impossible or unreasonably difficult for us, the customer's warranty rights shall lapse. If such changes of the goods lead to additional costs for the removal of defects, the customer must reimburse us for these additional costs.

If the defectiveness of a component used by us from another manufacturer leads to the defectiveness of our goods or service and if we are unable to remedy this deficiency for legal and/or actual reasons, we can assign to the customer the warranty claims to which we are entitled against the third party manufacturer; in this case, the customer's warranty claims against us shall only exist in this case and only insofar if and to the extent

that the judicial enforcement of the warranty claims against the third party which have been assigned to the customer is legally unenforceable or futile. The limitation period for the customer's warranty claims against us shall be suspended for the duration of the customer's assertion of claims against the third-party manufacturer.

If we deliver technical equipment and are responsible for the technical commissioning at customer, the following shall apply in addition to the above provisions on warranty and claims for defects:

If the equipment supplied by us corresponds to the agreed specifications, we shall not be liable if the commissioning of the equipment is delayed due to materials or other equipment or components used by the customer; it shall not constitute a defect in the goods or services if the equipment supplied by us cannot be operated or cannot be operated properly together with the materials or components or other equipment used by the customer, if and to the extent that the equipment supplied by us complies with the agreed specifications. This does not apply if the compatibility of our equipment with materials/components/equipment used by the customer is agreed upon and the customer has provided us with the information necessary for the achievement of the required compatibility.

The customer is obliged to inform us immediately if third parties assert claims against him in respect of our goods or services due to the infringement of property rights or copyrights. If the goods infringe an industrial property right or copyright of a third party, we shall, at our discretion, either modify or replace the goods in such a way that the rights of third parties are no longer infringed, but the goods nevertheless continue to fulfil the contractually agreed quality, or procure the right of use for the customer. If we are unable to do so within a reasonable period of time, both the customer and we shall be entitled to withdraw from the contract.

In all other respects, the customer's warranty claims shall be governed by the statutory provisions.

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VII. Liability

We shall only be liable for damages - irrespective of the legal basis - in the event of intent and gross negligence. In the case of simple negligence, we shall only be liable

- for damages resulting from injury to life, limb or health,
- for damages resulting from the breach of an essential contractual obligation (obligations whose fulfilment make the proper execution of the contract possible at all and on whose fulfilment the customer relies and may rely regularly), whereby liability in this case is limited to the compensation of the foreseeable, typically occurring damages.

The aforementioned limitation of liability shall not apply to the customer's claims under the Product Liability Act and insofar as we are legally liable under mandatory law or have fraudulently concealed a defect or have assumed a guarantee for the properties and condition of the goods.

The customer's free right to terminate the contract (for example in accordance with § 648 BGB) is excluded. The customer may only rescind or terminate the contract due to a breach of obligations on our part, which does not consist of a defect, if we are responsible for this breach of obligations.

VIII. Applicable law and place of jurisdiction

The legal relations between us and the customer are subject to the law of the Federal Republic of Germany, which applies to the legal relations between domestic contractual partners within the Federal Republic of Germany. The Convention on the International Sale of Goods (UN Sales Convention) is excluded.

Exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship between us and the customer is Trier, Germany. Mandatory legal provisions regarding exclusive jurisdiction remain unaffected.

Advice in accordance with the German Act on alternative dispute resolution in consumer matters

We are not obliged, nor are we prepared, to participate in dispute settlement proceedings before a consumer conciliation body. We therefore do not participate in dispute settlement proceedings before a consumer conciliation body.