



NEUMAN & ESSER GmbH Mahl- und Sichtsysteme - General Terms and Conditions of Sale of Spare Parts

Article 1. General

1.1. The terms and conditions set out below shall form part of the contract concluded with us. These General Conditions are intended to be applied exclusively to commercial transactions. They do not apply to transactions with consumers.

1.2. We hereby object to any counter confirmation, counter offer or other reference by the Buyer to its general terms and conditions; any dissenting terms and conditions of the Buyer shall only apply if we have confirmed the same in writing.

1.3. Our General Terms and Conditions shall apply to all subsequent transactions without any need of express reference thereto or contract thereon at the conclusion of such transaction.

Article 2. Orders

2.1. The offer, order acknowledgment, order acceptance of sale of any products covered herein is conditioned upon the terms contained in this instrument and will not be binding upon us unless assented in writing. No modification of the contract is valid unless agreed or evidenced in writing. Amendments or supplements to the contract shall be in writing. This applies equally to a waiver of the written form.

2.2. Unless otherwise expressly agreed in writing, any indicated time of delivery or information given verbally or in a telephone conversation shall be non-binding.

2.3. It is agreed that any information relating to the contract products and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists, as well as verbal information as to the time and terms of delivery and prices shall not take effect as terms of the contract unless expressly confirmed in writing.

2.4. The properties of specimens and samples are binding only insofar as they have been explicitly agreed to define the quality of the goods. Quality and other data constitute a guarantee only if they have been agreed and designated as such.

2.5. Any advice rendered by us is given to the best of our knowledge. Any advice and information with respect to suitability and application of the contract products shall not relieve Buyer from undertaking his own investigations and tests.

Article 3. Scope of performance

3.1. We undertake to procure licenses, permits, approvals or consents required for the export of the contract products. We are entitled to avoid the contract in whole or in part without compensation if the required export licenses, permits, approvals or consents are not granted by the authorities.

3.2. We are not obliged to perform any additional obligations not stated in the contract of sale. In particular, we are not obliged to insure the contract products, to procure certificates or documents not expressly agreed upon, to obtain required licenses, permits, approvals, consents or other formalities except as provided in article 3.1., to procure customs clearance and to bear levies, dues, taxes, duties and other charges accruing outside Germany or to comply with weight and measuring systems, packaging, labeling or marking requirements applicable outside Germany.

Article 4. Prices

4.1. Unless otherwise agreed to in writing, our prices are in Euro and shall exclude any statutory VAT which shall be payable at the date of delivery. The prices are to be understood EXW (Incoterms® 2010).

4.2. However, should we bear any costs which, according to the contract, are for the Buyer's account (e.g. for transportation or insurance), such sums shall not be considered as having been included in the contract price and shall be reimbursed by the Buyer.

4.3. Prices agreed on former transactions do not apply to subsequent transactions.

Article 5. Payment Conditions, Set-off, Suspending Performance

5.1. Our price claims are net cash amounts and payable free of any deduction within 30 days upon the invoice date unless other payment terms shall have been agreed in writing.

5.2.

We shall accept B/E, drafts, promissory notes and cheques only upon specific arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Buyer and immediately payable.

5.3.

The Buyer 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. Any retention or deduction for non-conforming contract products is limited to the non conforming contract products provided the Buyer having given notice of the lack of conformity in compliance with article 10.1.

5.4.

If the Buyer'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 cheques 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 equivalent to those according to the Belgian Insolvency Act shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Buyer 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 contract.

5.5.

Without prejudice to our continuing legal rights, we are entitled to suspend the performance of all obligations or to prevent the handing over of the contract products to the Buyer so long as there are grounds for concern that the buyer may completely or partly fail to fulfil its obligations under the contract.

Article 6. Interest in Case of Delayed Payment

If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in an amount equalling 8 % p.a.

Article 7. Retention of Title

7.1. We shall retain full title of the contract products that have been delivered until the Buyer has discharged all claims arising from the business relationship which shall include any account balance and claims from refinancing or reverse promissory notes.

7.2.

With our written consent, the Buyer shall have the right to dispose of the contract products delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in article 5.4. Moreover, we may withdraw the sales authority of the Buyer 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.

7.3.

The Buyer hereby assigns to us all claims arising from the resale of the contract products 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 Buyer (= reseller). We hereby accept such assignment.

7.4.

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

7.5.

If the Buyer shall be in breach of contract, in particular in payment default, then it shall, upon our demand, immediately return to us all contract products 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 contract products delivered under retention of title shall not be regarded as a rescission of the contract, unless expressly specified otherwise by us.

7.6.

In the cases referred to in article 5.4. above, we may require the Buyer to inform us about the claims arising from the resale that have been assigned to us in accordance with article 7.3. above including its debtors. Following such information, we shall have the right to disclose the assignment as we consider appropriate.

7.7.

If, according to the laws of the country of destination, an extended clause of reservation of ownership is not valid, we limit the reservation of ownership to a simple retention of title until full payment of the delivered contract products.

Article 8. Contractual Terms of Delivery

8.1.

Unless otherwise agreed, delivery shall be EXW Incoterms® 2010. The Buyer bears all risks of loss or damage to the contract products from the time of delivery of the goods to the carrier or another person nominated by the buyer at the agreed point, if any, at the named place on the agreed date or within the agreed period. However, if the Buyer fails to notify the nomination of a carrier or another person or to give notice, or the carrier or person nominated fails to take the contract products into charge, then the Buyer bears all risk of loss of or damage to the contract products from the agreed date, or in the absence of an agreed date from the date notified by us within the agreed period, or, if no such date has been notified, from the expiry date of any agreed period for delivery.

8.2.

We shall have the right to reasonable delivery in instalments.



Article 9. Force Majeure: Late-delivery, Non-delivery

In the case of a force majeure event, we are entitled to delay the delivery for the time the force majeure event occurs and for a reasonable period of time needed to prepare our performance or to avoid the contract as a whole or with regard to the part not performed because of the force majeure event. Force majeure event is 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 or cease of supply from our own suppliers in spite of reservation of timely supply.

Article 10. Non-conformity of the Goods

10.1.

The Buyer shall examine the contract products as soon as possible, but not later than 2 weeks after their arrival at destination and shall notify us in writing of any lack of conformity of the contract products without delay from the date when the Buyer discovers or ought to have discovered the lack of conformity. Notice of claims arising out of damage in transit must be lodged by Buyer directly with the carrier within the period specified in the contract of carriage and we shall be provided with a copy thereof. In any case, the Buyer shall have no remedy for lack of conformity if it fails to notify us thereof within 12 months from the date of arrival of the contract products at the agreed destination.

10.2.

The contract products do not conform with the contract of sale if at the time the risk passes to the Buyer, they are different to the specifications laid down in the specific sales contract, or in the absence of agreed specifications, the contract products are not fit for the purpose usual in Germany. However, the contract products will be deemed to conform to the contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties. We are in particular not liable for the contract products complying with further reaching expectations of the Buyer or for the compliance with the legal requirements existing outside of Germany. Irrespective of the legal requirements applicable in Germany, the contract products conform with the contract of sale to the extent the legal requirements applicable at the place of business of the Buyer do not impede the usual use of the contract products.

10.3.

Where contract products are non-conforming and provided the Buyer, having given notice of the lack of conformity in compliance with article 10.1., does not elect in the notice to retain them, we shall at our option:

- i. replace the contract products with conforming goods, without any additional expense to the Buyer, or
- ii. repair the contract products, without any additional expense to the Buyer, or
- iii. reimburse to the Buyer the price paid for the non-conforming contract products and thereby avoid the contract with regard to those contract products.

10.4.

The remedies under this article 10. are exclusive of any other remedy for non-conformity. However, the foregoing limitation of liability does not apply in the following cases:

- i. liability for wilful or fraudulent misconduct;
- ii. claims for damage to life, body and health caused by our negligent breach of duty, or by wilful or negligent breach of duty on the part of our legal representative(s) or vicarious agent(s);
- iii. if the contract products shall lack a characteristic that we have expressly guaranteed in writing provided the Buyer having given notice of the lack of conformity in compliance with article 10.1.

If such event occurs, our liability is limited at the typical foreseeable damage at the time of conclusion of the contract.

Article 11. Limitation of Action for Warranty Claims

11.1.

Unless otherwise agreed to in writing, Buyer's claims for non-conforming contract products are subject to a period of limitation of one year from receipt of the contract products. After the expiry of such term, the Buyer will not plead non-conformity of the contract products, or make a counter-claim thereon, in defence to any action taken by us against the Buyer for non-performance of the contract.

11.2.

In the following cases the legal periods of limitation apply instead of the one-year period:

- i. liability for wilful or fraudulent misconduct,
- ii. claims for damage to life, body and health caused by our negligent breach of duty or by wilful or negligent breach of duty on the part of our legal representative(s) or vicarious agent(s).

Article 12. Choice of Law

Any questions relating to the contract which are not expressly or implicitly settled by the provisions contained in the contract itself (i.e. these General Terms and Conditions of Sale and any specific conditions agreed upon by the parties) shall be governed:

12.1.

by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred to as CISG), and

12.2.

to the extent that such questions are not covered by CISG, by reference to substantial German law.

12.3.

Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms® 2010 published by the International Chamber of Commerce.

Article 13. Place of Performance and Jurisdiction

13.1.

The place of performance for deliveries shall be the place of our business.

13.2.

Regardless of the place of delivery of contract products or documents, the place of payment shall be our place of business.

13.3.

Any dispute arising out of or in connection with this contract shall be heard at the court having jurisdiction over our principal place of business. However, we have the right to bring an action against the Buyer at Buyer's principal place of business, or, if different from our place of business and Buyer's place of business, at the place of delivery of the contract products.

Article 14. Communication and Contract Language

Any notice or other communication required to be received by a party is only effective at the moment it reaches this party. If a time limit has to be observed, the notice or other communication has to reach the recipient party within such time limit. If these General Terms and Conditions of Sale are made known to Buyer in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Buyer's convenience. In case of differences of interpretation, the version in the Contract Language shall be binding.

Article 15. Final Provisions

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. This shall apply accordingly to any lacunae in the contract.