

## § 1 General scope

- 1) The business terms and conditions apply for all current and future business relationships in business dealings with companies.
- 2) Differing, contradictory or supplemental general business terms and conditions, particularly purchasing or order conditions, shall not become a part of the contract, even in the event of cognizance, unless their applicability is expressly agreed in writing (or in an equivalent form of communication technology: e-mail, fax, data exchange).

## § 2 Offer / conclusion of contract

- 1) The offers of our company are without engagement, to the extent that we identify them as being nonbinding. Verbal agreements and side agreements, as well as assurances from employees must be in written form, or stated in an equivalent form of communication technology (e-mail, fax, data exchange) in order to be legally effective.
- 2) With placement of the order, the customer bindingly declares that the service that is the subject matter of the contract is to be provided by us. He is bound to this (his offer) for a period of two weeks from receipt of the roller (core) by us and the clarification of the technical details necessary for the processing/manufacturing. We are entitled to reject the type of order placed/the offer in writing within this period, or in an equivalent form of communication technology (fax, e-mail, data exchange).
- 3) In the event of placing an order without providing rollers, the customer is bound to this for two weeks from receipt of same by us.
- 4) If we do not reject the offer (the order placement) within the periods stated above in No. 2 or 3, the
- 5) contract shall be concluded with us on the basis of the same. If we should provide an order confirmation prior to expiry of the period, this is decisive within the legally permissible scope for the conclusion of the contract.
- 6) If, in the case of No. 2, we reject the offer in good time, the regulations of § 7 AGB (General Business Terms and Conditions) shall apply correspondingly for the costs of returning the provided object. If the customer should default in retrieving the provided object, the regulation in § 6 AGB shall apply correspondingly.

## § 3 Joint ownership / reservation of ownership

- 1) If we should provide contributions in kind on objects that the customer has made available to us for respective processing in fulfilling the order, we shall obtain joint ownership according to §§ 947, 948, 950 BGB (German Civil Code) of the objects that have been processed with contributions in kind and thus changed.
- 2) If the legal transaction consists of the delivery of moveable objects that have solely been manufactured and/or acquired by our company, then we shall retain ownership of these -- in the case of providing contributions in kind in the sense of No. 1, the joint ownership -- until full settlement of all claims arising from an ongoing business relationship.
- 3) The customer is obligated to use the objects under reservation of ownership/joint ownership according to the proper course of business and to carry out the required maintenance and inspection works for implementation regularly at his own expense. He is furthermore obligated to inform us immediately of access by third parties to the respective objects, such as in the case of attachments, as well as possible damage to, or destruction of, the objects. A change of ownership of same, as well as possible change of location, particularly the plant premises where the objects are being utilised, must be immediately notified to us by the customer.
- 4) In the event that the customer violates the contract, particularly with payment default or by violation of one of the above regulations of No. 3, we are entitled to withdraw from the contract and demand the return of the goods. Further damages claims shall remain unaffected by this.
- 5) The customer is entitled to onward sale of the objects under reservation of ownership/joint ownership by way of a proper business transaction. He already now assigns to us all claims in the amount of the invoice sum/the proportional amount to be determined according to §§ 947, 948, 950 BGB, that accrue to him from third parties through the onward sale. We accept the assignment. After the assignment, the customer is authorised to collect the claim. We reserve the right to collect the claim ourselves, in the event that the customer does not properly fulfil his payment obligations and enters into payment default.
- 6) Through the further processing, particularly the amalgamation of the reserved goods with another object, particularly amalgamation with a machine, the result is that we acquire joint ownership in the respective

other/new object, in proportion of the value of the reserved object/joint ownership reserved object to the other processed/amalgamated objects.

- 7) To the extent that the ordering party is a businessperson who sells the reserved object on in an unprocessed or processed form in the normal course of business, he already assigns his claim to us now accruing from the onward sale, in the amount of the invoice sum of the reserved object/the reserved joint ownership share. We accept this assignment.
- 8) The authorisation for onward sale is, in all cases, dependent upon the legal effectiveness of the assignment of claims. This also applies correspondingly for the case in which the reserved object is used by the purchaser to fulfil a work and labour contract or work and materials contract.
- 9) The ordering party is not entitled to pledge the object under reservation/joint ownership reservation to third parties as collateral, to mortgage it to them or carry out exchange transactions with it. Likewise, he is not permitted, on the basis of the extended reservation of ownership, to hand over claims that have been assigned to us to a factoring bank as a subsequent customer, unless the factoring bank steps in directly towards us as a debtor of the purchaser. Furthermore, our written authorisation is required for assigning/selling assigned claims to a factoring bank on the basis of the extended reservation of ownership.
- 10) If debtors (third party debtors) pay the claims that have been assigned to us on the basis of the extended reservation of ownership by cheque or bill of exchange to our customer (purchaser), the ownership/joint ownership of these securities is transferred to us in the amount of the invoice sum, as soon as the purchaser acquires it. If payment should take place by bill of exchange, the purchaser hereby assigns his respective accruing rights to us in advance. The handover of the bill of exchange is replaced by the purchaser holding/jointly holding the bill of exchange on our behalf or -- if he does not directly obtain ownership of the security -- herewith assigns/jointly assigns to us his right to release it to third parties. In any case, the purchaser is obligated to notify the banks with which he has a business relationship about this reservation clause. In any case, we have the right to inform the banking connections of our customer about our business conditions and business relationships.
- 11) Upon request, the purchaser/customer is obligated to notify the third party debtor of the assignment to us and to inform us about this notification, as well as to send us the required information and documentation for collecting the assigned claims, together with this notification. The purchaser/customer must immediately inform us of an attachment or other limitation by third parties.
- 12) If the customer/purchaser enters into a current account relationship with his claims from an onward sale of such materials that are subject to our reservation of ownership, he hereby assigns to us the current account claims in the amount of the value of the reserved ownership/reserved joint ownership object. After netting out has taken place, this shall be replaced by the recognised balance that applies as being assigned, up to the sum that is equivalent to the original current account claim.
- 13) We commit to release the collateral to which we are entitled at the request of the customer, to the extent that the realised value of our collateral exceeds the claims to be secured by more than 10%: it is up to us to select the collateral to be released.

#### **§ 4 Payment**

- 1) The prices offered in our quotes are binding to the extent shown, if the quote is not identified as being non-binding. If the VAT is not separately shown, the prices are stated net without VAT. Possible freight costs and customs duties, as well as other carriage costs are not included in the pricing terms.
- 2) The customer is obligated to pay the price owed within ten days after transfer of risk (§ 5 of these terms and conditions). After expiry of this period, the customer shall enter into payment default and is obligated to pay default interest from entry into default in the amount of the conventional bank interest charged to us or the statutory default interest according to § 288 BGB. Differing payment terms in our order confirmation or invoices remain unaffected by this, to the extent that the customer is hereby placed in a better position.
- 3) The customer only has a right to set-off, if his counterclaims have been legally determined or acknowledged by us. He may only exercise a right of retention, if his counterclaim is based on the same contractual relationship and is acknowledged by us or legally determined.

## **§ 5 Completion/transfer of risk**

- 1) If the service to be provided by us concerns the purchase of an object, the risk of accidental loss or accidental deterioration of the object is transferred to the customer three days after issuing our completion notification, otherwise, it is with handover, with a dispatched sale, it is with delivery of the object to the carrier, the freight forwarder or another person or institution specified to carry out the dispatch.
- 2) If the subject matter of the contract is the provision of a service, particularly on the basis of a contract for work and labour, the customer is obligated to call off/collect the service/object of the service immediately after receiving the completion notification transmitted by us. If the customer does not fulfil his obligation to call-off/retrieve within three business days after receipt of the completion notification, he shall then (i.e. from the fourth day) enter into acceptance default. With the entry into default, the risk of accidental loss and accidental deterioration of the object is transferred to the customer. In the case of dispatch, the above regulation in No. 1 applies correspondingly.

## **§ 6 Storage**

In the case that the customer has entered into default pursuant to § 5 of these terms and conditions, we are entitled to charge appropriate storage costs from entry into default for the objects that are determined for the customer and being stored with us. The level of the storage costs shall be set according to the duration of storage during default, on the one hand, and on the composition/volume of the respective object, on the other hand.

## **§ 7 Packaging costs/transport/transport costs**

- 1) Our provision of service is completed with the completion of the respective object. If the customer commissions us with dispatching the object, this shall take place in his name and at his expense. If the dispatch takes place with transports of our company, this is also not prepaid.
- 2) In the case of the customer requesting dispatch, in the absence of other instructions, we are entitled to carry out the type of the respective dispatch and the appointment of a carrier or freight forwarder (in the name of the customer) according to our best commercial judgment.
- 3) In the absence of other agreements, the transport costs will, in all cases, be invoiced to the customer/ordering party.
- 4) The costs for suitable transport packaging will also be invoiced separately.

## **§ 8 The ordering party's duty to cooperate**

The fulfilment of the orders placed with us requires the customer/contractor/ordering party to fulfil the following duties to act/cooperate:

- 1) In the case of being provided, the iron cores are to be delivered in sturdy transport boxes that guarantee impact-free storage of the incoming goods. The core surface of the iron cores must be free from cavities, normally overwound and free from ridges. The cores themselves must be hollow, provided with offset drill holes of approx. 10 mm Ø or drilled-through pins on the front side for vulcanisation, centred on rotation and balanced. Ball bearings and similar roller accessories are to be dismantled by the ordering party prior to delivery. Otherwise, it will be charged separately.
- 2) The cores must withstand a processing temperature of at least 150 degrees Celsius and pressure of at least ten bar.

## **§ 9 Liability for defects**

- 1) Our customers are obligated to inspect the received objects/the services provided by us for lack of defects, according to §§ 377 ff. HGB (German Commercial Code), immediately after transfer of risk. They must notify us of evident defects in writing or equivalent communication technology within a period of two weeks after receipt of the objects/services; otherwise the assertion of defect claims is excluded. The customer bears the full onus of proof for all claim prerequisites, particularly for the defect itself, for the point in time of determining the defect and for the timeliness of the notice of defect.

- 2) For the properties and condition of the object/service, only the information contained in our offers/confirmations applies. The ordering party/customer does not receive guarantees from us in the legal sense. Specifically, we do not assume liability for individual implementability by the customer of the contractual service/object provided.
- 3) Liability for defects remains excluded for the discharge of oil and grease residue on rollers that do not have their cores attached, as well as with binding defects resulting from this. Our liability is also excluded for the appearance of rust film on metal parts. Our liability is furthermore excluded for such defects that result from improper use/transport or storage by the customer and, for example, result from temperature stress (temperatures below 5 degrees Celsius). Hardness tolerances of +/- 5 shore A are considered to be in accordance with the contract.
- 4) The defect claims expire one year from transfer of risk/provision of our contractual service/delivery of the goods. The duty of notification by the customer according to § 377 HGB (German Commercial Code) remains unaffected by this and also applies to services under contracts for work and labour.
- 5) If and to the extent that the customer is entitled to defect claims, we shall provide, for defects on the object delivered by us or the service performed by us, at our option, warranty through defect elimination, correction, replacement delivery, new manufacture, reduction or withdrawal, whereby, in the case of withdrawal, our obligation for reimbursement is limited to the possibly paid contractual price.
- 6) If we have decided in favour of correction and this is unsuccessful, the customer principally has a right, at his option, to demand reduction of payment (reduction) or winding up of the contract (withdrawal). With only an immaterial contractual violation, particularly with only immaterial defects, the customer, however, does not have a right of withdrawal. If, after failed subsequent fulfilment, the customer chooses withdrawal from the contract due to legal or material defects, the customer is not entitled to additional indemnification as a result of the defect. If the customer chooses indemnification after failed subsequent fulfilment, the goods shall remain with the customer, if this is reasonable. The indemnification is limited to the difference between the contractual price and the value of the defective object. This does not apply if our contractual violation is due to deliberate action that is contrary to duties.
- 7) A possible reimbursement amount according to § 9.5 or 9.6 sentence 1 of these General Business Conditions is reduced proportionally (on a pro rata temporis basis) according to the relationship of the period from the start of expiry in the sense of § 9.4 until the moment of lodging of the first claim for defects by the customer, or otherwise to the period of 12 months. If the customer can demonstrate that the moment of commissioning of the defective object occurred after transfer of risk, then this moment is decisive for determining the period.

#### **§ 10 Limitations of liability with violations of duty to be settled**

- 1) With respect to companies, we are not liable for slightly negligent violation of immaterial contractual duties.
- 2) Furthermore, our liability is limited, to the extent that no obligatory legal regulations countermand it, to the foreseeable, typical contractual, direct, average loss according to the type of service/object (goods) contractually owed by us.
- 3) The herewith stipulated liability limitations do not apply in the case of personal damages, in specific, in the case of damage to life, body or health.
- 4) Moreover liability in the case of deliberate conduct or gross negligence is unaffected.

#### **§ 11 Delivery/performance period**

- 1) The delivery period begins with the dispatch of the order confirmation/acceptance of our offer by the customer and after complete clarification of all required technical preconditions for performing the service, however, in no case prior to provision/delivery by the customer of the necessary objects, documents, approvals, releases and prior to receipt of a possibly agreed advance payment, subject to a separate agreement with the customer.
- 2) The delivery/performance period is met if, by its expiry, the delivery object has left our plant or the completion notification has been issued.
- 3) The dates and deadlines stated by our company are not fixed dates, in the absence of other written agreements.

- 4) Delays in delivery/service performance due to force majeure or due to events that make the delivery/service performance significantly difficult or impossible for our company -- these include difficulties in obtaining materials that have arisen subsequently, operational disruptions, strikes, lock-outs or other official directive for which we are not responsible, also to the extent that this occurs with upstream suppliers --are not the responsibility of our company, even with bindingly agreed deadlines and dates. You authorise us to postpone the delivery/service performance by the duration of the impediment, plus a certain start-up period, or to entirely or partially withdraw from the agreement due to the not yet fulfilled part. Claims for damages by our customers are excluded in such a situation.
- 5) If the impediment which is not our responsibility in the sense of the above No. 4, lasts for longer than one month, the customer is entitled to withdraw from the contract with respect to the not yet fulfilled part, after the setting an adequate subsequent deadline. Further rights of the customer are excluded. The same applies if we are not responsible for the delivery and/or service performance delay for other reasons.
- 6) Our company is entitled to provide partial deliveries/partial service performance, to the extent that such is technically possible in terms of the type of order placed.
- 7) In all cases, the delivery and service performance periods are extended by the period of time in which the customer does not fulfil his obligations towards us, regardless of whether they are based on other legal grounds or other transactions with the customer.
- 8) If the customer/ordering party enters into acceptance default or violates other duties of cooperation, we are entitled to demand compensation for the loss arising to this extent, including possible extra costs. Rights to further claims remain reserved.
- 9) To the extent that the preconditions of the above No. 8 are met, the risk of accidental loss or accidental deterioration of the subject matter of the contract (goods/main service) is transferred to the ordering party/customer at the point in time when the same has entered into acceptance or debtor default.
- 10) The above provisions in No. 4 also apply for the case that we are not/not punctually supplied by our upstream supplier with the raw materials required to fulfil the contract and the lack of delivery is not due to circumstances that are our responsibility. If the delivery of raw materials/preliminary materials definitively does not take place, we are entitled to withdraw from the contract. A possible payment issued by the customer will be reimbursed. Further claims by the customer are excluded. With respect to the storage and return transport of the objects provided by the customer in this regard, the regulations in §§ 6 and 7 of these General Business Conditions apply correspondingly.

## **§ 12 Quality/dimensions and weights**

- 1) Qualities and dimensions are determined according to the DIN norms/materials sheets, to the extent that other standards or foreign norms have not been agreed in writing. To the extent that no DIN norms or materials sheets exist, the respective Euro norms apply and in the absence of these, the trade practice. The reference to norms, materials sheets or factory test certificate of all types and/or the description of our deliveries and services with respective information do not apply as assurance of qualities. Also, to the extent that the delivery or service is intended for a particular use by the ordering party and this becomes part of the contract, this does not imply the assurance of characteristics.
- 2) The use of the manner and extent of raw materials is determined by us. We are entitled to deviate from specifications provided in the order, to the extent that the service/object to be provided is not negatively affected.
- 3) In the same manner, we reserve the right, after conclusion of the contract, to carry out changes regarding the service to be provided by us/the objects to be manufactured, to the extent that this is reasonable for the ordering party, namely:
  - Product changes in the course of constant further product development and improvement;
  - Immaterial and insignificant colour, shape, design, size, weight or quantity changes;
  - Deviations that are customary in the trade

## **§ 13 Place of performance/mode of payment**

- 1) The place of performance for all deliveries and services, as well as for payments of our business partners is the head office of the company.
- 2) Decisive for punctual payment is, in all cases, is the receipt of same by our company or the definitive value date/encashment of the security.
- 3) We are not obligated to accept cheques and bills of exchange, unless it involves bank-guaranteed cheques.

#### **§ 14 Jurisdiction**

The jurisdiction for all business relationships with our customers is Spenge / Nordrhein-Westfalen. This also applies to non-contractual claims or claims within the scope of the bill of exchange/cheque process. We are also entitled to sue the business partner at his general jurisdiction.

#### **§ 15 Applicable law / other conditions**

- 1) For legal and business relationships with our contractual partners, the law of the Federal Republic of Germany applies, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 2) Other clauses (Incoterms, et al.) that are recommended/practiced in international commercial business transactions apply for the contractual relationships with the customer only if and to the extent that this is agreed in written or equivalent communication technology form (e-mail, fax, data exchange).

#### **§ 16 Severability clause**

If a (if several) provision(s) of this complex should be or become invalid, the legal effectiveness of the other provisions shall remain unaffected. In place of the invalid provision, the relevant statutory regulations shall apply, to the extent that these are not legally waived by the remaining provisions. In place of the invalid provision, another is considered to be agreed that comes as close as possible to the invalid provision.

#### **§ 17 Modifications and/or amendments**

- 1) Modifications or amendments of these conditions can be made only by legally authorized representatives of Nowack Gummiwalzen GmbH & Co. KG.
- 2) Conditions that antedate the present body of rules are cancelled or replaced by it.