

# General Terms and Conditions of Business

## State of Revision 05/2015

### I. General Terms and Conditions

1. The present Terms and Conditions shall govern any and all – even future – legal relationships of a contractual and non-contractual manner between us and the Principal even if not expressly specified in individual cases. Contrary conditions of the Principal do not cancel out the validity of these General Terms and Conditions of Business, even if we do not explicitly contradict or have contradicted them.
2. General Terms and Conditions of Business of the Purchaser shall only apply insofar as the Supplier has expressly approved them in writing. Deviating Terms and Conditions of Purchase of the Purchaser will not become part of the contract, even through acceptance of order. The validity thereof is expressly contradicted. The scope of supplies and/or services shall be governed by both parties' written declarations.
3. The supplier reserves the unrestricted right of ownership and copyright exploitation rights in cost estimates, drawings and other documents. Such documents may only be made accessible to third parties given the prior written approval of the Supplier and shall be returned to him immediately upon his request if the contract is not awarded to the Supplier. The foregoing provision shall also apply to documents of the Purchaser; these may, however, be made accessible only to those third parties to whom the Supplier has rightfully transferred supplies.
4. The Purchaser has the non-exclusive right to use standard software and firmware in unchanged form with the agreed performance parameters and on the agreed equipment. The Purchaser is allowed to create a backup copy of the standard software without express agreement.
5. The term "Compensation claims" used in these General Terms and Conditions of Business does not include any claims for reimbursement of expenditures made to non-avail.
6. A contract shall come into existence upon written order confirmation of the company Noxmat GmbH. The offers of the company Noxmat GmbH are non-binding and non-committal. They can be revoked by Noxmat GmbH until acceptance by the Purchaser.

### II. Prices, Terms of Payment, Setoffs

1. Unless otherwise agreed, the prices shall apply ex works excluding packaging, loading, shipment, insurance, customs duties and unloading as well as plus legally valid value added tax.
2. Unless otherwise agreed, the invoice shall be due for payment net 14 days after the date of invoice.
3. The right to withhold payments or to set-off with counterclaims shall only accrue to the Purchaser to the extent that his counterclaims are undisputed or have been legally established.
4. If the Supplier has agreed to undertake erection and/or assembly and unless otherwise agreed, the Purchaser shall bear the agreed remuneration and any incidental costs required such as travel and transport costs as well as allowances.

### III. Delivery Time, Delayed Delivery

1. The delivery time is based on the agreements made between the contracting parties. Observance thereof by the company Noxmat GmbH presumes that all commercial and technical questions between the contracting parties have been clarified and the Purchaser has fulfilled all obligations incumbent on him, such as e.g. provision of the necessary official certificates or permits, provision of process utilities or has made a down payment. If this is not the case, the delivery time will be reasonably extended. This shall not apply insofar as the company Noxmat GmbH is responsible for the delay.
2. Compliance with the delivery time is subject to the proviso that correct deliveries are received in due time by our own suppliers. The company Noxmat GmbH shall give notice of delays that become apparent as soon as possible.
3. The delivery time has been complied with when the delivery item has left the factory of the company Noxmat GmbH prior to its elapse or the readiness for shipment has been notified. Insofar as an acceptance is required – except for justified refusal of acceptance – the date of acceptance, alternatively the notification of readiness for acceptance shall be decisive.
4. If dispatch and/or acceptance of the delivery item are delayed for reasons the Purchaser is responsible for, then the costs incurred by the delay will be charged to the Purchaser commencing one week after notification of readiness for dispatch or acceptance.

5. If the failure to meet the delivery time is attributable to:

- force majeure (war, acts of terrorism, riots or similar events)
- labour disputes (strike, lockout or similar events)
- virus and/or other attacks of third parties to the Supplier's IT-system insofar as they took place despite the observance of usual care and diligence for precautionary measures
- obstacles due to German, US as well as other applicable national, EU or international regulations of foreign-trade legislation or due to other circumstances the Supplier is not responsible for
- modifications of order after confirmation of order
- untimely and/or improper delivery by the Supplier, or
- other events which lie outside the sphere of influence of the company Noxmat GmbH, the delivery time shall be reasonably extended. The company Noxmat GmbH shall promptly notify the Purchaser of the commencement and the end of any such circumstances.

6. If the Supplier is in default, the Purchaser shall – as far as he satisfactorily proves that he has suffered damages therefrom – be entitled to claim a compensation in the amount of 0.5 % each per full week of delay, however, maximum 5 % of the price for the part of deliveries that could not be used for the intended purpose due to the delay.

7. Both compensation claims on the part of the Purchaser for defaults in deliveries and services which exceed the limits stipulated in Clause 3 shall be excluded in all instances of delayed delivery, even after expiry of any delivery deadline set to the Supplier. This shall not apply as far as liability exists in cases of intent, gross negligence or injury of life, body or health. Within the framework of statutory provisions, the Purchaser may withdraw from the contract only if the delay of delivery and/or service is attributable to the Supplier. A change in the burden of proof to the disadvantage of the Purchaser is not associated with the provisions given above.

8. Upon the Supplier's request, the Purchaser is obliged to state within a reasonable period of time whether he withdraws from the contract as a result of the delay of delivery and/or service or whether he insists on the delivery and/or service being effected.

#### **IV. Transfer of Risk, Acceptance**

1. The risk will be passed to the Purchaser once the item of delivery has left the factory, even if partial deliveries are made or if the company Noxmat GmbH has agreed to perform other services e.g. to bear dispatch costs or carry out delivery and installation. Insofar as acceptance has to be carried out, this shall be definitive for the transfer of risk. Such acceptance must be carried out without undue delay on the acceptance date, alternatively after the notification by the company Noxmat GmbH of the readiness for acceptance. The Purchaser shall not refuse acceptance in the event of a minor defect.

2. If dispatch and/or acceptance are delayed or prevented by circumstances the company Noxmat GmbH is not responsible for, the risk will be transferred to the Purchaser as from the day of notification of the readiness for dispatch and/or acceptance. The company Noxmat GmbH undertakes to take-out the insurances which the Purchaser demands at the Purchaser's expense.

3. Partial deliveries shall be permitted insofar as reasonable for the Purchaser.

#### **V. Installation and Assembly**

Unless otherwise agreed in writing, the following provisions shall apply for installation and assembly.

1. The Purchaser shall bear the costs for and provide timely and in compliance with the rules:

- equipment and consumables required for installation and start-up such as scaffolds, hoisting gears and other devices as well as fuels and lubricants;
- energy and water at the site of use including proper and conformant connections as well as heating and illumination;
- at the place of installation, enough suitable, dry and lockable rooms of appropriate size for storing machine parts, apparatus, materials, tools etc. as well as appropriate work and recreation rooms for assembly personnel with suitable sanitary installations as one would reasonably expect under the circumstances. Apart from that, the Purchaser shall take the same measures to protect the Supplier's property and the assembly staff on the construction site that he would take to protect his own property and the safety of his employees;
- protective clothing and protective devices which are necessary due to special circumstances prevailing at the place of installation.

Prior to commencement of installation work, the Purchaser is obliged to provide without special request all necessary information regarding the location of concealed power, gas or water lines or similar installations as well as required static information.

2. The scheduled installation deadlines are binding. The company Noxmat GmbH and the Purchaser shall warrant the compliance with these deadlines. In case of unforeseeable situations, the contracting parties shall try to find an alternative deadline. In any case, the information of possible postponements must be given by the company Noxmat GmbH or the Purchaser as early as possible. If a scheduled installation deadline is cancelled by the Purchaser:

- up to 8 weeks before the scheduled deadline, no penalty will become due
- shorter than 8, however, up to 6 weeks before the scheduled installation deadline, Noxmat GmbH will bill for 25 % of provision costs
- shorter than 6, however, up to 4 weeks before the scheduled installation deadline, Noxmat GmbH will bill for 50 % of provision costs
- shorter than 4, however, up to 2 weeks before the scheduled installation deadline, Noxmat GmbH will bill for 75 % of provision costs
- shorter than 2 weeks before the scheduled installation deadline, Noxmat GmbH will bill for 100 % of provision costs.

The provision costs are calculated from the number of scheduled personnel at a worktime of 8 hours per day plus probably incurring costs for cancelling overnight stays and travelling costs. Installation staff still to be transferred to other work locations by Noxmat GmbH will be excluded from the calculation.

## **VI. Retention of Title**

1. The delivery item shall remain the property of the Supplier until receipt of all payments arising from the Supply Contract.
2. The Supplier shall be entitled to insure the delivery item, at the cost of the Purchaser, against theft, breakage, fire, water and other damages unless the Purchaser has demonstrably taken-out insurance cover by himself.
3. The Purchaser may neither sell nor pledge the delivery item, nor assign it as security. In case of pledges as well as seizure or orders by third parties, he must notify the company Noxmat GmbH thereof without undue delay.
4. In the event that the Purchaser should resell retained goods, he hereby assigns all his future claims arising from the resale against his customers, along with all subsidiary rights – including any claims relating to the payment of balance -, to the Supplier by way of security without the need for any further special declarations. If the retained goods are resold together with other goods without having agreed on an individual price for the retained goods, the Purchaser will assign that part of the overall price demand to the Supplier which corresponds to the price of the retained goods invoiced by the Supplier.
5. Working and processing of the delivered item shall always take place in our name and on our behalf. Insofar as the purchase item is processed with other objects not belonging to Noxmat GmbH, Noxmat GmbH shall acquire the co-ownership in the new item in the ratio of the objective value of the delivery item with regard to the other processed objects at the time of processing. The same applies in the case of mixing. Insofar as mixing takes place in such way that the item of the Purchaser is to be regarded as main item, it shall be deemed to be agreed that the Purchaser assigns co-ownership pro rata to us and that thus resultant sole ownership or co-ownership is retained on our behalf. To secure our claims against the Purchaser, the Purchaser shall also assign to us such claims to a third party which result from the combination of retained goods with real estate; we hereby accept this assignment.
6. Until revocation, the Purchaser shall be authorised to collect assigned claims arising from the resale. In the event of an important reason, in particular, delay in payment, suspension of payment, opening of insolvency proceedings, protest of a bill or justified evidences of overextension or imminent inability to pay of the Purchaser, the Supplier shall have the right to revoke the collection authorisation of the Purchaser. Moreover, the Supplier shall be entitled, after prior announcement and under observation of a reasonable notice period, to disclose the assignment of title, to exploit the assigned claims, and to request disclosure of the assignment of title by the Purchaser to the Customer.
7. In the event of attachments, seizures or other dispositions or interventions of third parties, the Purchaser shall promptly notify the Supplier thereof. In the event of a substantiated legitimate interest, the Purchaser shall promptly provide the Supplier with all information required to assert his rights towards the Customer and hand-over the necessary documents.
8. If the Purchaser is in breach of his duties, in particular, by defaulting in payment, the Supplier shall also be entitled to cancellation and to take the goods back after the unsuccessful expiry of an appropriate deadline set to the Purchaser. The statutory provisions concerning the dispensability of setting a deadline shall remain unaffected hereby. The Purchaser shall be obliged to surrender the goods. Withdrawal and/or enforcement of the retention of title or seizure of retained goods by the Supplier shall not constitute withdrawal from the contract.
9. Filing of a petition in insolvency entitles the company Noxmat GmbH to withdraw from the contract and demand immediate return of the delivery items.
10. Noxmat undertakes, on the Purchaser's request, to release securities to the extent that their value exceeds the claims to be secured by 20 %.

## VII. Claims for Defects

§ 377 of the German Commercial Code (HGB) shall apply

For material defects and defects of title, the company Noxmat GmbH will warrant excluding further claims – subject to Section VII – as follows:

### **Material defects:**

1. All those parts must be remedied free of charge or replaced without flaws which prove to be faulty as a result of a circumstance occurred before the transfer of risk. The discovery of any such defect must be reported forthwith to the company Noxmat GmbH in writing. Replaced parts shall become the Supplier's property.
2. After consultation with the company Noxmat GmbH, the Purchaser must allow the necessary time and opportunity to carry out all remedies and replacement deliveries which the company Noxmat GmbH deems necessary; otherwise the company Noxmat GmbH is exempted from the liability for consequences resulting therefrom. Only in urgent cases that endanger the operational safety and/or to avert unreasonably greater damages of which the company Noxmat GmbH needs to be informed promptly, the Purchaser shall have the right to rectify the defect by himself or to have the defect rectified by a third party and to demand compensation for the expenses incurred from the company Noxmat GmbH.
3. Of the direct costs incurred as a result of remedy and/or replacement delivery, the company Noxmat GmbH shall – provided that the complaint proves justified – bear the costs of the replacement part including shipment costs. Moreover, it shall bear the reasonable costs for dismantling and mounting as well as the costs for the probably required provision of fitters and helpers including travelling costs, provided this does not constitute an unreasonable burden imposed on the company Noxmat GmbH.
4. Within the scope of statutory provisions, the Purchaser is entitled to withdraw from the contract if the company Noxmat GmbH – under consideration of the legal exceptions – allows an appropriate set time period for the remedy or replacement delivery due to a material defect to elapse fruitlessly. If the defect is only of a minor nature, the Purchaser shall merely have the right to reduce the contractual price. The right to reduce the contractual price shall otherwise be precluded. Further claims are exclusively governed by Section VII.2 of these Terms and Conditions.
5. No warranty is granted particularly in the following cases: Unsuitable or improper use, faulty assembly and/or putting into operation by the Purchaser or third parties, provision of supply media not in conformity with required tolerances, natural wear and tear, faulty or negligent handling, improper maintenance, chemical, electrochemical or electrical influences – insofar as they are not the responsibility of the company Noxmat GmbH.
6. If the defect is remedied improperly by the Purchaser or a third party, the company Noxmat GmbH will not bear any liability for the consequences resulting therefrom. The same shall apply to modifications of the delivery item made without the prior approval of the company Noxmat GmbH.

### **Defects of title:**

7. If the use of the delivery item leads to the infringement of industrial property rights or copyrights within Germany, the company Noxmat GmbH shall, at its expense, provide the right for the Purchaser to generally continue to use the delivery item or to modify the delivery item in a manner reasonable for the Purchaser such that the infringement of the property right no longer exists. If this is not possible at commercially reasonable conditions or within a reasonable time period, the Purchaser shall have the right to withdraw from the contract. Under the stated preconditions, the company Noxmat GmbH shall also have a right to withdraw from the contract.
8. The obligations of the company Noxmat GmbH set forth in Section VII.7 hereof are – subject to Section VII.2 – final in the event of infringement of industrial property rights or copyrights. They shall apply only if
  - the Purchaser notifies the company Noxmat GmbH promptly of any claims made with regard to infringements of industrial property rights or copyrights;
  - the Purchaser supports the company Noxmat GmbH to a reasonable extent in the defence of such claims asserted and/or enables it to carry out the modification measures pursuant to Section VII.7;
  - the company Noxmat GmbH retains the right to execute the defence measures including out-of-court settlement;
  - the defect of title was not caused by an instruction of the Purchaser; and
  - the infringement did not arise from unauthorised modifications of the delivery item by the Purchaser or from any use of same by the purchaser in a way that does not comply with the contract.

### **VIII. Liability**

1. If the delivery item cannot be used as stipulated in the contract by default of the company Noxmat GmbH as a result of negligent or incorrect execution of proposals and consultations that took place prior to the conclusion of contract or due to a violation of other contractual ancillary obligations – in particular, instructions for operating and servicing the delivery item -, the provisions of Sections VII. and VIII.2 shall apply mutatis mutandis with the exclusion of further claims on the part of Purchaser.

2. The company Noxmat GmbH is only liable for damages not arising on the delivery item itself – on whatever legal grounds -

a) in case of intent;

b) in case of gross negligence on the part of the owner/committees or company executives;

c) in the event of culpable injury to life, body and health;

d) in case of defects it has maliciously concealed or the absence of which it has guaranteed; or

e) in case of defects on the delivery item insofar as there is a liability for personal injuries or material damages to privately used items according to the Product Liability Act.

In the case of culpable breach of cardinal contractual obligations, the company Noxmat GmbH shall also be liable for gross negligence on the part of non-executive employees and for minor negligence, whereby the latter case shall be limited to the contractually typical and reasonably foreseeable damage.

3. Other claims shall be excluded.

### **IX. Impossibility, Contract Adjustment**

To the extent the delivery is impossible the Purchaser shall be entitled to claim damages except the impossibility is attributable to the Supplier. However, the claim for damages of the Purchaser shall be restricted to 10 % of the value of the part of delivery which cannot be used for the intended purpose due to the impossibility. This restriction shall not apply as far as liability is assumed in cases of intent, gross negligence or injury to life, body or health. A change in the burden of proof to the disadvantage of the Purchaser is not connected thereto. The Purchaser's right to withdraw from the contract remains unaffected.

### **X. Statute of Limitation**

All claims of the Purchaser – raised for whatever legal reasons – shall become statute-barred 12 months after passing of risk to the Purchaser.

The statutory deadlines shall apply to claims for damages pursuant to Section VIII. 2.a-e.

### **XI. Applicable Law, Legal Venue**

1. The legal relationships between the company Noxmat GmbH and the Purchaser shall be exclusively governed by the law of the Federal Republic of Germany that applies to the legal relationships of domestic parties.

2. The place of venue shall be the competent court at the registered office of the company Noxmat GmbH. However, the company Noxmat GmbH shall also have the right to sue at the Purchaser's headquarters.

### **XII. Severability Clause**

Should one of the foregoing Terms and Conditions be or become invalid, either in whole or in part, the validity of the remaining provisions remains unaffected thereby. The invalid provision shall be replaced by another one which comes as close as possible to the economic purpose of the invalid provision.