



NILOS

NILOS GmbH & Co. KG • Germany

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General Terms and Conditions (GTC)

§ 1 Placing of order

1. These General Terms and Conditions shall apply to our supplies and services exclusively. A customer in the meaning of these General Terms and Conditions shall be an entrepreneur in accordance with Art. 14 of the German Civil Code (BGB) who purchases goods or places an order for the production of the goods or for work or services. Our General Terms and Conditions shall apply only to companies, legal entities under public law or special funds under public law. 2. Orders as well as supplements and amendments to orders already placed which are not made in writing shall only be binding on us if they are acknowledged in writing by us. 3. Our General Terms and Conditions shall apply exclusively; any of the customer's conditions deviating from our General Terms and Conditions shall not be recognized by us unless we have expressly consented to their validity. Our General Terms and Conditions shall also apply if, while being aware of opposed terms and conditions or of conditions of the customer's deviating from our terms and conditions, we carry out supply without any reservations. 4. Delivery dates stated in quotations shall be merely approximate and shall require final confirmation in the order acknowledgement in order to become an integral part of the contract. The prices stated in the quotation shall be fixed prices plus statutory value added tax (VAT) at the respective current rate. 5. Should, on the basis of documents subsequently sent, it turn out that delivery by us is not possible, we shall be entitled to refuse delivery within 2 weeks of receipt of the purchase order.

§ 2 Price changes

Price changes shall be admissible if there is a period longer than six weeks between the conclusion of the contract and the delivery date agreed upon. If after that wages, cost of materials or marketable purchase prices increase up to the completion of delivery, we shall be entitled to increase the price appropriately in accordance with the cost increases. The party placing the order shall be entitled to rescission of the contract if the price increase considerably exceeds the rise in the cost of living in general between the purchase order and despatch. Rescission must take place without undue delay.

§ 3 Specification

1. The scope of supply shall be determined by our written order acknowledgement. 2. The right to make design or shape modifications which are attributable to the improvement of the technology and/or to the legislator's demands, shall remain reserved during the delivery period, as long as the item to be supplied is not significantly modified and the changes are acceptable for the party placing the order. 3. For the execution of orders according to drawings, plans, sketches, flyers, lists or other documents, for us those shall always apply which were made available to us by the customer or its authorized representative. We shall not take on the task of checking the correctness of these documents. For faulty information provided in them, no matter of what kind, we shall not accept any responsibility and in this connection shall not be obliged to make any payments of damages at all. All specifications made known to us shall apply with the usual tolerances. To the extent that the documents made available to us are requested back, defects of all kinds claimed after that cannot be accepted if as a result the checking of the defects is made impossible. 4. The use of standards for purchase orders is used merely for the description of goods and not as a warranty of characteristics. 5. If supply together with test certificates from upstream suppliers is promised, liability for the correctness of such test certificates shall not be accepted unless expressly agreed otherwise.

§ 4 Delivery

1. The minimum order value shall be € 500.00 net ; lower order values will be charged with a handling fee of 45,00 €. 2. We shall deliver "EXW ex works Hilden" (INCOTERMS in the currently valid version). Within the domestic market we deliver "DAP named place" (INCOTERMS in the currently valid version) from a value of € 1000.00 net with a means of transport of our choice, as a rule parcel service. 3. Cost of express and special delivery as well as special packaging (e.g. because of oversize or marine transport) shall be borne by the purchaser, irrespective of the goods value. 4. We reserve the right to make excess delivery or short delivery of up to 10 % of the order quantity in the case of production to the customer's specifications. 5. If, due to the customer's fault, acceptance does not take place in good time, we shall at our own discretion be entitled after setting an additional period of 19 days to charge either warehousing or other costs or to rescind the contract and to demand damages. The risk shall pass to the purchaser after the expiry of the additional period of time.

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Amtsgericht Düsseldorf HRB 80714

Geschäftsführer:
Dipl.-Ing. Thomas Ziller
USt-IdNr. DE121379514
Steuer-Nr. 135/5924/0256

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§ 5 Payment

1. The payment of pure goods deliveries shall be made net within 14 days after the date of the invoice, unless otherwise stated in the invoice. The payment of assembly services shall be net within 8 days after the date of the invoice, unless otherwise stated in the invoice. 2. Cheques and bills of exchange shall be considered payment only after cashing or honouring. The acceptance of a bill of exchange shall always require prior written agreement with us. Upon the acceptance of bills of exchange, the bank charges shall be charged (discount and collection). They are to be paid in cash immediately. 3. Default interest shall be charged by us at 8 percentage points above the base interest rate. Claiming of further damages shall not be excluded. 4. The customer shall only be entitled to offsetting rights if its counterclaims have been the subject of a final and non-appealable court decision, are undisputed or have been recognized by us. The customer shall only be authorized to exercise a right of retention if its counter-claim is based on the same contractual relationship.

§ 6 Delivery time

1. The agreed delivery time shall apply subject to correct and timely delivery to the supplier itself. 2. The delivery time shall begin upon dispatch of the order acknowledgement, but not before the provision of the documents, approvals, releases to be procured by the customer, if necessary, and not before receipt of an agreed down-payment. The delivery time shall be deemed to have been observed if, by the time of its expiry, readiness for dispatch has been announced or the goods have left the works or plant. 3. The delivery time shall be extended in the case of measures within the scope of labour disputes, in particular strike and lockout, as well as in the case of unforeseen obstacles beyond our control, e. g. disruptions of operation and/or delays in the delivery of essential materials, to the extent that such obstacles provably exert a considerable influence on the delivery of the goods. This shall also apply if the circumstances occur at sub-contractors'. The delivery time shall be extended according to the duration of such measures and obstacles. The circumstances described above shall not be our responsibility even if they occur during a delay already in progress. We shall notify the customer of the beginning and the end of such obstacles without undue delay. 4. Part deliveries shall be admissible with the delivery times stated by us, unless disadvantages for use result from them.

§ 7 Subsequent delivery, damages due to violation of obligations

If the customer wishes to receive damages due to a delivery that has not arrived in place of performance or rescission of the contract, first of all we are to have a 4 week period set for the subsequent performance of delivery. The period of time shall begin as of the day on which we receive the notification by a registered letter, fax or e-mail. Before expiry of the time limit for subsequent delivery, claims by the purchaser on the grounds of delayed delivery shall be excluded.

§ 8 Force majeure

If we are prevented from meeting our obligation by the occurrence of external nonoperating circumstances, which we could not foresee and avert despite the care taken that was unreasonable according to the circumstances of the case - no matter whether they have occurred in our factory or on our sub-contractor's premises - e.g. operational disturbances, labour dispute measures, official measures or cases of force majeure and if as a result delivery becomes impossible or, observing the contents of the obligations and of the requirement of loyalty and good faith, the provision of services is grossly disproportionate to the buyer's interest in the service and we invoke the fact, we shall be exempted from the service. If delivery does not become impossible in the event of the existence of the circumstances stated above, the delivery time shall be extended appropriately. Rescission of the contract shall be ruled out unless the delay in delivery will probably last longer than 6 months.

§ 9 Cost of cancellation

If the party placing the order unjustifiably rescinds an order placed, we can, regardless of the possibility of making a claim for higher actual damage/loss, claim 10 % of the selling price for the costs incurred and for loss of profit. The party placing the order shall reserve the right to provide evidence of lower damage/loss.

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§ 10 Acceptance and passing of risk

1. The customer shall be obliged to accept the goods. In the absence of any deviating agreement, delivery shall be made in Hilden. 2. The customer shall be entitled to check the goods within two weeks after receipt of an advice of readiness for collection or any other notification at the place of delivery. The party placing the order shall be obliged to accept the item to be supplied within the same period, unless it is temporarily prevented from acceptance for no fault of its own. 3. If the party placing the order is in arrears with acceptance with intent or gross negligence more than two weeks after receipt of the advice of readiness for collection, we shall be entitled, after setting an additional period of two weeks, to rescind the contract or to demand damages because of violation of obligation. The setting of an additional period of time shall not be required, if the party placing the order seriously or finally refuses acceptance or is obviously unable to pay the purchase price even within this time. 4. The risk of accidental perishing and of the accidental deterioration of the goods shall pass to the customer upon delivery, upon dispatch of the goods to the forwarding agent, the carrier or the person or institution otherwise designated for execution of forwarding. It shall be deemed tantamount to delivery if the customer is in arrears with acceptance.

§ 11 Warranty and remedy of defects

1. If a defect is found, we shall reserve the right of choice of subsequent performance. To the extent that we seriously and finally refuse performance or refuse remedy of defect and subsequent performance because of disproportionate cost, and it has objectively failed, the customer can, at its option, only demand reduction in price or rescission of the contract. 2. The warranty period shall always be one year. The period of limitation in the event of delivery regress according to Articles 478, 479 of the German Civil Code (BGB) shall remain unaffected. This shall not apply if claims for damages because of defects are involved. Art. 13 shall apply to claims for damages because of a defect. 3. The customer shall not be given any guarantees in the legal sense by us. 4. We are to be notified in writing of any obvious defects within two weeks after receipt of the goods; otherwise the lodging of the claim under the warranty shall be excluded. Timely posting shall suffice for meeting the deadline. The customer shall bear the burden of evidence for all claim prerequisites, in particular for the defect itself, for the point in time of the ascertaining of the defect and for the timeliness of the notification of defects. 5. If the customer, because of a material defect or a defect of title, chooses rescission of the contract after the failure of subsequent performance, the customer shall not additionally have any claim to damages due to the defect. If, after failed subsequent performance, the customer chooses damages, the goods shall remain with the customer if the customer considers that reasonable. The damages shall be restricted to the difference between the selling price and the value of the defective item. This shall not apply if we have caused the violation of obligation maliciously. 6. In the case of a contract for work and services, the customer shall, as the party placing the order, after an extra period has been set/subsequent performance which, however, remained unsuccessful and/or if the subsequent performance is unreasonable for the party placing the order, be entitled to the rights according to the statutory provisions. 7. In the event of a case involving warranty, it shall be incumbent on the customer to hold defective parts at our disposal up to our declaration as to their further use and on request to return them to us at our expense. Should this not be done, any warranty shall be excluded if checking of the parts becomes impossible as a result. 8. Objections to or complaints about part deliveries shall not entitle the customer to refuse the performance of the whole contract. 9. As the condition of the goods or of the work only our description shall be deemed to have been agreed upon. Our public statements, blurb or advertising shall not, besides that, constitute any statement as to the contractual condition or characteristics. 10. Slight deviations from the technical specifications shall only constitute a defect if as a result the usability and the performance of the goods is more than only insignificantly restricted.

§ 12 Limitation of claims for payment

Our claims for payment shall be subject to the statute of limitations in five years.

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§ 13 Restriction on liability

1. Our liability for violation of contractual obligations as well as in tort shall be restricted to intent and gross negligence. This shall not apply in the case of injury to life and limb of the customer and impairment of the customer's health, claims for violation of cardinal obligations, i.e. of obligations resulting from the nature of the contract and upon the violation of which achievement of the purpose of the contract is endangered, as well as in the case of compensation for damage/loss caused by default (Art. 286 of the German Civil Code (BGB)). To that extent we shall be liable for every degree of fault. 2. The above mentioned exclusion of liability shall likewise apply to slightly negligent violations of obligations by our vicarious agents. 3. To the extent that liability for damage/injury/loss, which is not based on harm to life or limb of the customer or impairment of the customer's health, is not ruled out for slight negligence, such claims shall be subject to the statute of limitations within one year starting from the arising of the claim and/or, in the case of claims for damages because of a defect, from delivery of the item. 4. To the extent that the liability for damages towards us is excluded and restricted, this shall also apply with regard to the personal liability for damages and to our salaried employees, staff, co-workers, representatives and vicarious agents. 5. The claim for damages by the customer against us shall be limited, regarding the amount, to the damage/loss typically incurred. The customer's claim for damages against us shall not comprise contractual penalties or similar agreements which the customer makes with third parties in connection with our performance. Something else shall only apply if the customer draws our attention in writing in good time beforehand to the risk of such an agreement and we, having considered the risk, nevertheless execute the business to which we would in this case not have been obliged.

§ 14 Reservation of title

1. We reserve title to the goods up to complete settlement of all claims under a current business relationship. 2. In the event of behaviour in breach of contract by the party placing the order, in particular in the case of delay in payment, we shall be entitled to rescind the contract and to demand the return of the goods. 3. The party placing the order shall be entitled to resell the items supplied in the ordinary course of business; it shall, however, already now assign to us all of the claims in the amount of the (net) invoice amount, and in fact irrespective of whether the items supplied are resold before or after processing and/or mixing with third-party property. We hereby accept the assignment. The party placing the order shall be authorized to collect these claims after their assignment. We shall reserve the right to collect the claim ourselves as soon as the party placing the order does not meet its payment obligations in the due manner, and defaults on payment. In this case, the party placing the order must, without undue delay, obtain for us all of the information as well as documents required for collection and bring the assignment to the notice of the debtors (third parties). 4. The machining and processing of the goods by the party placing the order shall always be carried out in our name and on our behalf. If the goods are processed or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods to the other processed or mixed items at the time of processing or mixing. 5. The party placing the order shall preserve the co-ownership for us. 6. The party placing the order may neither pledge the goods nor transfer them as security. Pledging, confiscation or other disposals by third parties are to be reported to us without undue delay by the party placing the order and all of the information and documents required for the protection of our rights are to be obtained. Law enforcement officers and/or third parties are to have their attention drawn to our property. 7. We undertake to release the security to which we are entitled at the request of the party placing the order if and to the extent that it exceeds the value of the claims to be secured, as far as they are outstanding, by more than 20 %.

§ 15 Place of performance, place of jurisdiction, miscellaneous

1. The law of the Federal Republic of Germany shall apply. The United Nations Convention on contracts for international sale of goods is not applicable. 2. The place of performance shall be Hilden. 3. The exclusive place of jurisdiction for all disputes under or arising from this contract shall be our registered head office in Hilden. The same shall also apply if the customer does not have any general place of jurisdiction in Germany or the domicile or usual residence at the point in time of the bringing of an action is unknown. We shall, moreover, be entitled to bring an action at the place of the customer's registered head office. 4. Legally relevant declarations and notifications which the customer shall have to make or give to us or a third party, shall be required to be made in writing. The transfers of the customer's rights and obligations under the contract concluded with us shall require our approval in writing in order to be effective. 5. Should one or more provisions of the contract with the customer including these General Terms and Conditions be or become ineffective, the effectiveness of the other provisions shall not be affected thereby. The completely or partly ineffective provision shall hereby already be deemed to have been replaced by a new effective one which fulfils as far as possible the same legal and economic purpose. The same shall apply to an unnoticed gap in the rulings of these provisions.

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§ 16 Export control

1. Principles: We draw the customer's attention to the fact that European and German foreign trade law applies to the transfer/export of goods (goods, software, technology) and to the provision of services (e.g. assembly, maintenance, servicing, repairs, instruction/training, etc.) with a cross-border connection in order to fulfill the contractual obligation and that the individual deliveries and technical services may be subject to export control restrictions and prohibitions. This applies in particular to so-called armaments and dual-use goods. The relevant legal provisions are, in particular, Regulation (EC) No. 428/2009 (EC Dual-Use Regulation) and its annexes, the Foreign Trade and Payments Act (AWG), the Foreign Trade and Payments Ordinance (AWV) and its annex (Part I Section A and B of the German Export List), as amended. In addition, there are European and national embargo regulations against certain countries and persons, companies and organizations that may prohibit the delivery, provision, transfer, export or sale of goods and the provision of services or make them subject to approval. The customer acknowledges that the above-mentioned legal provisions are subject to constant changes and adaptations and are to be applied to the contract in their respective valid version. The customer undertakes to recognize and comply with the European and German export control regulations and embargo regulations, in particular if the customer is affected by a re-export requirement of a permit issued to us by the export control authority. We shall inform the customer of any such requirement at the latest prior to shipment/export. The customer further undertakes not to sell, export, re-export, deliver, pass on or otherwise make accessible the delivered goods either directly or indirectly, indirectly or directly to persons, companies, institutions, organizations or countries, if this violates European or German export regulations or embargo regulations. Upon request, the customer is obliged to provide us with appropriate and complete information on the end use of the goods or services to be delivered, in particular to issue so-called end-use documents (EUCs) and to send them to us in the original in order to be able to check the end use and the intended purpose of the goods or services to be delivered and to be able to prove this to the competent export control authority. 2. Withdrawal, compensation by us: If any necessary export or transfer licenses or other foreign trade permits or approvals are not granted by the competent authorities or not granted in good time or if there are other obstacles to the performance of the contract or delivery due to the customs, foreign trade and embargo regulations to be observed by us as exporter or transferor or by our suppliers, we shall be entitled, without prejudice to other rights, to withdraw from the contract or from the individual delivery or service obligation. This shall also apply if corresponding obstacles under export control and embargo law – e.g. due to a change in the legal situation – only arise between the conclusion of the contract and the delivery or performance of the service or when asserting warranty rights and make it temporarily or permanently impossible to perform the delivery or service because the necessary export or shipment licenses or other foreign trade permits or approvals are not issued or revoked by the competent authorities or other legal obstacles arise due to customs, foreign trade and embargo law. transfer licenses or other approvals or releases under foreign trade law are not granted or are revoked by the competent authorities or other legal obstacles due to customs, foreign trade and embargo regulations to be observed prevent the performance of the contract or the delivery or service. Section 13 shall apply to any claims for damages on the part of the customer for this reason.

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