

General Conditions of Sale and Delivery (CSD)

for Novus air GmbH Weinböhla: 02/2020

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I. General

1. These conditions, alongside any individual contractual agreements, apply to all sales and deliveries. Any of the purchaser's purchase conditions that deviate from it do not become contractual terms even through acceptance of the order. Our sales conditions also apply when we unconditionally carry out a delivery to the customer in the knowledge of their contradictory or deviating conditions. A contract comes into force – unless otherwise agreed – on written confirmation of the supplier.
2. Our offers are legally non-binding and subject to alteration. Our technical advice and any information given in catalogues, adverts and price lists is non-binding. The content of our order confirmation alone is authoritative, as long as it has not been contradicted within 7 days.
3. The supplier reserves all copyright and intellectual property rights to samples, cost proposals, drawings or similar information, material or immaterial – including in electronic form; they may not be made accessible to third parties. The supplier commits only to make information and documents indicated as confidential by the purchaser accessible to third parties with the approval of the purchaser.
4. All agreements made between us and the customer for the purpose of executing this contract are laid down in writing in this contract.

II. Prices and payments

1. The prices apply, if not otherwise agreed, ex works including loading at the factory, but not including packaging and unloading; these will be billed separately. The prices exclude VAT as legally defined on the day of invoicing.
2. Shipment and all costs connected with it such as customs clearance will be paid for by the purchaser. With this regard, the parties expressly agree the incoterms2020 EXW Weinböhla, Germany.
3. If not otherwise agreed, the payment is to be made without any deduction to the supplier's account, to be precise:
 - + 1/3 payment on receipt of order confirmation
 - + 1/3 as soon as the purchaser is informed that the goods are ready for shipment,
 - + the remaining amount within 14 days of the transfer of risk.
 In addition, legal regulations regarding the consequences of late payments apply.
4. Invoices for services (assembly, maintenance and servicing) are to be paid net immediately on receipt.
5. The purchaser bears the cost of discount and exchange fees.
6. The purchaser has the right to reserve payment or make counterclaims only if these counterclaims are uncontested, legally authoritative or recognised by us. In addition, they are only permitted to exercise their right of retention if the counterclaim is based on the same contractual relationship.
7. Any subsequently discovered or occurring credit unworthiness on behalf of the purchaser allows us to alter payment conditions as we see fit, or withdraw from the contract.

III. Delivery periods, delivery delays

1. Delivery periods or dates are non-binding. If a binding delivery period is agreed, this begins on the date of order confirmation. Its fulfilment by the supplier requires all commercial and technical issues to have been settled between the contractual parties and the purchaser to have fulfilled all the obligations incumbent upon them such as procurement of required certificates or approvals from authorities or making a payment. If this is not the case, the delivery period will be extended correspondingly. This does not apply if the supplier is responsible for the delay.

2. Complying with the delivery period requires correct and prompt upstream delivery. The supplier will communicate any delays that may result as soon as possible.
3. The delivery period has been kept to if the object of the delivery has left the supplier's works or its readiness for shipment has been communicated by the deadline. If approval has to take place, the approval date is authoritative here – except where justified refusal of approval is given – and alternatively the notification of readiness for approval.
4. If the shipment or approval of the object of the delivery are delayed for reasons caused by the purchaser, they will be charged warehousing costs of € 50.00 per day from the 3rd day of the notification of readiness for shipment or approval. Beginning a month after the notification of readiness for shipment or approval, the purchaser will be charged the additional costs resulting from the delay.

IV. Transfer of risk, approval

1. The risk is transferred to the purchaser if the object of the delivery has left the works, including if partial deliveries take place or the supplier has taken on other services such as shipment costs or supply and installation. If approval must be made, this decides the transfer of risk. If must be made promptly by the approval date, or alternatively on the supplier's communication of readiness for approval. The purchaser may not refuse approval on the basis of a non-essential defect. Transport insurance will be taken out only on the express wish and at the expense of the purchaser. If nothing else is agreed, the transport route and means of transport are the choice of the contractor.
2. If shipment or approval is delayed or not carried out for reasons not ascribable to the supplier, the risk is transferred on the day shipment or approval readiness was communicated to the purchaser.
3. Partial deliveries are permissible if acceptable to the purchaser.

V. Retention of title

1. The supplier retains title to the object of delivery until all payments in the delivery contract are received – including for any owed ancillary services.
2. The supplier is entitled to insure the object of delivery at the purchaser's cost against theft, breakage, fire, water and other damage, if the purchaser cannot prove they have taken out such insurance of their own accord. If maintenance and inspection works are required, the purchaser must carry these out in good time at their own cost.
3. The purchaser may neither re-sell, pledge or collateralise the object of delivery. In case of seizure, confiscation or other third-party disposal, the supplier must be informed without delay, as suit can be made by the supplier as per § 771 ZPO. If the third party is not able to reimburse the supplier with the legal and out-of-court costs of a suit as per § 771 ZPO, the purchaser will be liable for the loss made by the supplier.
4. The purchaser has the right to sell the purchased item on in the course of ordinary business; however, at this point they already assign to the supplier all claims in the amount of the final invoice (incl. VAT) resulting from the resale against the customer or third parties, irrespective of whether the purchased item is resold with or without further processing. The purchaser is authorised to collect on these claims even after assignment. The supplier's authorisation to collect on the claims is unaffected by this. However, the supplier commits not to collect on the claims as long as the purchaser complies with their payment obligations resulting from

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- the collected proceeds, does not fall into arrears, has not made any request for the opening of insolvency or settlement proceedings and no suspension of payment has been made. However, if this is the case, the supplier can demand that the purchaser makes known to them the assigned claims and their debtors, gives all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
5. The processing or restructuring of the purchased object by the purchaser is always carried out for the supplier. If the purchased item is processed using other objects not belonging to the supplier, the supplier gains co-ownership of the new object in proportion to the value of the purchased object (final invoice amount incl. VAT) to that of the other processed objects at the point of processing. The same applies to the object created through processing as to the purchased item delivered under retention of ownership.
 6. If the purchased item is inseparably mixed with other objects not belonging to the supplier, the supplier gains co-ownership of the new object in proportion to the value of the purchased object (final invoice amount incl. VAT) to that of the other mixed objects at the point of mixing. If the mixing takes place in such way that the purchaser's object can be seen as the main component, it can be considered agreed that the purchaser transfers proportional co-ownership to the supplier. The purchaser holds the sole or co-ownership thus created for the supplier.
 7. The purchaser also assigns the supplier claims for security of the claims against it that result against third parties from the connection of the purchased item with a plot of land.
 8. The supplier undertakes to release the securities to which it is entitled at the request of the purchaser to the extent that the realisable value of the supplier's securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released is incumbent on the supplier.
 9. In case of breach of contract by the purchaser, in particular, through default of payment, the supplier is entitled to withdraw the object of delivery after warning has been given, and the purchaser obliged to yield it. In this case, the purchaser already authorises the supplier's entry into the business premises. The withdrawal of the object of delivery implies withdrawal from the contract by us. We are entitled to recover costs of the object of delivery after its withdrawal; the realisation proceeds are to be deducted – minus suitable liquidation costs – from the customer's liabilities.
 10. The request to open insolvency proceedings on behalf of the purchaser allows the supplier to terminate the contract and demand immediate return of the object of delivery.

VI. Complaints, warranty and liability

1. The supplier reserves the right to make alterations based on technical innovations, new prescriptions or similar developments.
2. Complaints regarding defects are to be raised promptly on receipt of the goods. They will be turned down if not made to us within a week of receipt of the goods. Defects undetectable even to a careful inspection within this deadline (hidden defects) are to be notified of immediately after their discovery. Complaints about defects are to be made immediately on receipt of the delivery. The warranty period is 12 months. This period begins on transfer of risk.
3. The supplier accepts the warranty for justified complaints according to the below regulations:
 - a) The supplier is obliged either to rectify or replace the goods, as they decide. On request of the purchaser, it must declare within 14 days which of these options they will take.
 - b) If rectification or replacement is impossible, if they fail, are refused or if further attempts at rectification are not reasonable for the supplier, the purchaser can demand a suitable discount (price reduction) or withdrawal from the contract, as they wish.
 - c) No claims of the purchaser against the supplier and its agents for damages will be accepted; this does not apply to damages to life, limb and health and compulsory liability as per the product liability law. In addition, the disclaimer does not apply if the damages result from intentional or gross negligence of duty on the part of the contractor or one of its legal representatives or agents. If the supplier is not accused of any intentional breach of contract, the liability for damages is limited to the foreseeable, typical damages.
 - d) The disclaimer also does not apply in the case that damages can be traced back to the breach of essential duties by the contractor. In this case, the supplier will be liable for damages as per the legal conditions – but in any case, only to the extent that these were foreseeable as a potential consequence of breach of duty on conclusion or negotiation of the contract, or taking account of the known or knowable conditions.
 - e) If the purchaser is entitled to compensation in lieu of performance because of negligent breach of duty, the supplier's liability is likewise limited to the foreseeable, typical damages that might result.
4. Until the complaint has been dealt with, the goods complained about cannot be made available. The supplier can demand that the affected goods are properly stored at the purchaser's cost.
5. No liability is accepted, in particular, in the following cases: improper or unsuitable use, incorrect assembly or commissioning by the purchaser or a third party, natural wear, incorrect or negligent handling, improper maintenance, unsuitable operating materials, defective construction works, unsuitable construction site, chemical, electrochemical or electrical influences – unless any of these is the responsibility of the supplier.
6. If the purchaser undertakes alterations to the object of delivery without the written approval of the contractor, all warranties are void.

VII. Total liability

1. A more extensive liability for damages than that given in VI. cannot be accepted without referral to the legal nature of the claim being made. This applies in particular to claims for damages resulting from fault on agreement of the contract, other breaches of duty or claims under tort for compensation for material damage as per § 823 BGB.
2. The limitations of No.1 also apply if the purchaser, instead of claiming for damages, demands the reimbursement of useless expenditures in lieu of performance.
3. If the supplier's liability for damages is limited or excluded, this also applies with regard to the personal liability of employees, staff, colleagues, representatives and agents of the supplier.

VIII. Damages from the contractual partner

1. In all claims for damages in lieu of performance made against the purchaser, the supplier has free disposal over the object of delivery.
2. Within the scope of the dissolution of this claim for damages, we have the right to demand without evidence 15% of the net order amount as a lump-sum reimbursement of lost profit. The ability to claim further damages is unaffected by this.
3. The purchaser's right to prove lesser damages on behalf of the supplier is unaffected by this.

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IX. Rental

1. If the contractual parties agree the rental of the supplier's goods, the specific offer made has legal priority.
2. Within the specific offer, the parties are permitted to loan the goods to the customer for a specific test period. This test period will be agreed between the parties in question in the case in question.
3. If the customer decides to accept the goods after the period has elapsed, the agreed rent will be calculated into the agreed sale price. The customer must also take on the costs agreed in the offer, such as flat rate cleaning services or similar.
4. If the customer decides to buy the goods, the parties will agree a special sales contract.
5. Any damages to the rental object will be invoiced specially to the customer.
6. These terms and conditions and the delivery conditions as per the offer have priority.

X. Use of software

If software is included in the scope of delivery, the purchaser is accorded the non-exclusive right to use the supplied software and its documentation. It is transferred for use with the object of delivery intended for it. Use of the software on more than one system is prohibited.

The purchaser may copy, revise, translate or convert the software from object code to source code (§§ 69 a ff. UrhG) only to the extent legally permitted. The purchaser is obliged not to remove manufacturer information – particularly copyright notices – or change it without prior express permission of the supplier. All other rights to the software and documentation, including its copies, remain with the supplier or software supplier. Sub-licensing is not permitted.

XI. Applicable law, place of jurisdiction

1. For all legal relationships between the supplier and purchaser, the only law that applies is that of the Federal Republic of Germany regulating the legal relationships between domestic parties.
2. German law also applies even if the purchaser is based abroad.
3. The place of jurisdiction is the location of the supplier's headquarters. The supplier is, however, entitled to bring suit in the jurisdiction where the purchaser is headquartered.
4. If no other concrete provision is made in the order confirmation, the place of performance is the business headquarters of the supplier.

XII. Validity of the conditions

1. If a provision of this CSD or a contract agreed with us should be rendered invalid, the validity of the other provisions is unaffected.
2. Alterations and additions to the contract can be made exclusively in writing by the management or an authorised representative of NOVUS. Verbal ancillary agreements and subsequent contractual alterations by other parties are only legally valid if approved in writing by the management of NOVUS. Any waiver of the requirement of written form itself requires written form.