

**Nordmann, Rassmann Handelsges.m.b.H**

**General Terms and Conditions of sale and supply  
for business transactions with entrepreneurs**

NORDMANN's offers, goods and other services (including consulting services, provision of information and the like) are performed exclusively on the basis of these General Terms and Conditions. Any terms and conditions of the customer departing herefrom, which NORDMANN has not expressly acknowledged in writing, shall not be binding on NORDMANN, even if NORDMANN does not expressly object to them. These General Terms and Conditions shall also apply to all future business relations, even if NORDMANN should fail to expressly refer to them in connection with later contracts (i.e. in particular with respect to orders placed by telephone).

Acceptance of the goods ordered shall in any event be deemed an acknowledgment of these General Terms and Conditions. All agreements between the parties must be reduced to writing. The foregoing also applies to any ancillary agreements and undertakings as well as to subsequent contractual amendments. Any amendment of this clause shall likewise only be valid if made in writing.

**1. Offers, product descriptions and scope of supply**

- a) NORDMANN's offers shall always be deemed without obligation; in the case of new customers, NORDMANN shall only be deemed to bindingly enter into contracts and other agreements where NORDMANN provides written confirmation thereof.
- b) The subject-matter of the contract shall be deemed exclusively the product sold, with such qualities and characteristics (and intended for such use) as is set forth in the product description attached as an annex to the purchase agreement/the order confirmation. Public statements, promotional literature or advertising shall not constitute any contractual description of the quality of the goods beyond or in addition to the production description.
- c) The parties shall only be deemed to have agreed with respect to other or further qualities and/or characteristics or to an intended purpose exceeding the foregoing if NORDMANN has expressly confirmed this in writing.
- d) With respect to the scope of supply, NORDMANN's written confirmation of order shall govern; in the case of an offer by NORDMANN which is limited in time and is accepted within such time limit, the offer shall govern if no timely confirmation of order has been given. Excess or short deliveries customary in the industry of up to +/- 10% are permissible.
- e) NORDMANN reserves its rights of ownership and copyright to its cost estimates, offers, drawings and other documents; customers may not disclose them to third parties.

**2. Prices**

- a) Our stated prices are quoted exclusive of VAT and shall apply only to contracts which are fully performed in a single delivery run. Our prices are quoted per quantity unit as per our written order confirmation; in the absence of any special agreements, they are quoted ex works/ex warehouse including loading and packaging. In the absence of a separate agreement, the price shall not be deemed to include insurance of the goods by NORDMANN. Quantities are referenced without packaging.
- b) If following formation of the parties' contract, a legal norm is issued pursuant to which import duties are changed with effect at the agreed of the time of delivery or during a portion of such time which results in changes to NORDMANN's documented costs, then NORDMANN's prices shall be deemed amended accordingly. NORDMANN shall communicate its new prices to the purchaser without delay. 'Import duties'



within the meaning of this term shall include customs, levies and excise taxes. If the price effective under this agreement, the agreements as to compensation for freight forwarding or if our payment terms or our ability to make increases or changes to the freight forwarding agreements or payment terms are changed by statute or government regulation or are prohibited as to the seller, then NORDMANN may resile from the as-yet unperformed portion of the contract and shall have no obligation to pay compensation.

**3. Delivery periods**

- a) The delivery period shall begin to run at such time as the written confirmation of order is despatched, but not before such time as the customer has procured all conditions precedent to proper performance of the contract (documentation, permits and any agreed down-payment).
- b) The delivery period shall be deemed met if on or before the expiry thereof the goods have left the works/warehouse or NORDMANN has given notice of its readiness to ship. Early delivery prior to the delivery date is permitted upon prior notice. NORDMANN's compliance with delivery periods is premised on the purchaser's performance of its contractual obligations. NORDMANN's obligations are subject to the reservation that deliveries are correctly and timely made to it.

Agreed delivery dates shall be binding on the customer. If the contract provides that the customer may issue or call orders for goods with respect to certain specified months or weeks, then these delivery terms shall likewise be binding on the customer.

The delivery period shall be deemed extended by a reasonable time in cases of labour disputes, in particular of cases of legal strikes and lock-outs, as well as upon the occurrence of unforeseen impediments lying outside of NORDMANN's control, e.g.: disruptions to operations, *force majeure*, war, interventions by public authorities, where such impediments are proven to have been of significant impact on the completion or delivery to the customer of the goods and could not be averted despite reasonable care by NORDMANN.

NORDMANN shall likewise not be deemed to bear responsibility for the foregoing circumstances where they occur during a pre-existing default. In material cases, NORDMANN shall notify the customer of the beginning and end of any such impediments as soon as possible.

- c) In the event of a default in contract performance by NORDMANN, the customer shall, following the expiry to no avail of a grace period of at least two weeks (which the customer is required to set), be entitled to resile from the contract with respect to the delayed individual delivery.

NORDMANN hereby disclaims any liability for claims in compensatory damages for default unless such claims are based on intentional acts or omissions or gross negligence.

The customer shall be entitled to exercise rights beyond the right of rescission (in particular: right to demand compensatory damages) only if the delivery default is attributable to an intentional act or omission or an act of gross negligence for which NORDMANN bears responsibility.

- d) NORDMANN shall be entitled to make partial deliveries. On contracts entailing ongoing deliveries, the customer shall issue call orders for and group deliveries in approximately equal monthly quantities, notifying NORDMANN thereof no later than four weeks prior to the beginning of the month of delivery in question. If timely call orders or order groupings are not issued, then the seller shall, after setting a reasonable grace period, be entitled at its option either to group the deliveries itself and to deliver the goods or, after setting a reasonable grace period, to issue a final refusal to perform the outstanding portion of the contract and may demand compensatory damages.

Where NORDMANN defaults with respect to an element of partial performance of the contract, the customer shall only be entitled to assert claims with respect to that element of partial performance, except where the partial performance which has occurred is of no interest to the customer.

- e) Defaults of acceptance shall in all other respects be governed by the statutory rules.

#### **4. Payment/Payment default/Set-off/Retention/Assignment**

- a. Unless NORDMANN has issued a written confirmation to the contrary, NORDMANN's invoices are payable net of any deductions no more than 30 days from the date of receipt.

In the event of a payment default, the purchaser shall pay default interest of 8% over the base interest rate according to European Central Bank p.a., except where the purchaser proves a lesser amount of damages or NORDMANN proves a greater amount of damages.

- b. The customer is not entitled to set off any disputed counterclaims or counterclaims which have not been determined by *res judicata* judgment against NORDMANN's claims for payment, nor may it assert any rights of retention.

Unless otherwise agreed in writing, no cash discounts or other deductions are permitted.

- c) If NORDMANN learns subsequent to formation of the contract that the customer's financial condition has deteriorated, NORDMANN may demand security for its performance of the contract. Deterioration of financial condition shall, in particular, be deemed to include offers to enter into extra-judicial settlements, applications for the opening of judicial composition with creditors or insolvency proceedings or entry on a list of debtors or any "blacklist".

If partial payments have been agreed, then, where the customer is in default of paying any instalment for 14 days, where its financial condition deteriorates or where it ceases to make payments, the entire outstanding amount shall be deemed immediately payable (without regard to the due dates of any bills of exchange which may have been issued).

Receivables and claims under this agreement may not be assigned to third parties unless the parties have made a written agreement to the contrary.

#### **5. Shipment and passage of risk**

- a. The risk shall be deemed to pass to the customer – independent of the burden of cost – as soon as the goods have left NORDMANN's works or warehouse/as soon as the goods have been handed over at the works or the warehouse to the purchaser, the shipper, freight forwarder or any other person or entity for purposes of forwarding.

Where collection of the goods by the customer or its agents has been agreed, then passage of the risk shall be deemed to occur no later than at the end of the second day following the date on which NORDMANN provides notice that the goods are ready for collection. If NORDMANN acts in any capacity in connection with forwarding, it shall be deemed to be acting exclusively as the agent of the customer.

- b) The customer shall notify NORDMANN of the desired mode of shipping without delay at the time of entering into the contract. If the customer's notice is not made at the latest within 7 days from the date the parties' contract is formed, then NORDMANN shall be at liberty to select the mode and means of shipping/forwarding.

NORDMANN shall bear no liability whatsoever for problems (damage, delay) arising in connection with transport. Any costs of re-loading and/or further forwarding resulting from missing or incorrect details with respect to the destination shall be



borne by the customer, even if, by way of exception, NORDMANN is supposed to bear the costs of shipping by party agreement. NORDMANN shall select the packaging for the goods in its own discretion.

- c) NORDMANN shall not arrange for any insurance without a written order of the customer to such effect.
- d) In all further and other respects, the "INCOTERMS 2010", as from time to time amended, shall apply by way of supplementation of the foregoing.

## **6. Reservation of title**

- a) NORDMANN reserves title to the goods. Goods supplied shall remain NORDMANN's property until such time as the purchase price and all incidental charges have been paid in full.
- b) NORDMANN's reservation of title shall be deemed extended to encompass products arising by means of processing, combining or commingling.

If NORDMANN's reservation of title goods are processed, combined or inseparable commingled with goods of other manufacturers, or if they are incorporated with goods of other manufacturers, NORDMANN shall be deemed to acquire co-ownership in the new item of goods *pro rata* in proportion of the invoice value of the reservation of title goods to the invoice value of the other goods used at the time of the processing or commingling. Where the purchaser acquires sole ownership in the new item of goods, the parties hereby agree that the purchaser shall grant NORDMANN co-ownership in the new item of goods *pro rata* in proportion of the invoice value of the processed/incorporated, combined or commingled reservation of title goods, and shall store the same for NORDMANN, free-of-charge. The rights of co-ownership thus arising shall be deemed to constitute a reservation of title within the meaning of these terms and conditions.

- c) In the event of breach of contract by the customer, in particular in the event of a default of payment, NORDMANN shall be entitled to resile from the contract and demand that the customer surrender the goods. The customer shall bear an obligation to surrender the goods.
- d) Where the customer manifestly operates as a retailer, the customer shall be entitled to re-sell the goods in the ordinary course of its business (but in no event following an application for the opening of judicial or extra-judicial composition with creditors proceedings or any insolvency proceedings), subject to the proviso that the receivable from such re-sale shall pass to NORDMANN as follows:

The customer hereby assigns to NORDMANN, now and in advance, all receivables, together with any and all incidental and ancillary rights against its purchaser or against third parties which it may derive from the re-sale, irrespective of whether the reservation of title goods are re-sold without processing or are re-sold after processing. NORDMANN hereby accepts this assignment now and in advance.

Where the customer includes the receivable from re-sale of the goods in a current account it maintains with its customers, then the entire amount of the current account receivable shall be deemed assigned to NORDMANN. After netting-out, the current account receivable shall be deemed replaced by the acknowledged account balance which shall be deemed assigned to NORDMANN in an amount up to the sum of the original current account receivable. NORDMANN likewise hereby accepts assignment of these receivables now and in advance.

To the extent the customer re-sells the reservation of title goods on a credit basis, it shall secure the rights of the reservation of title seller (NORDMANN) at the time of such re-sale. The customer shall continue to be entitled to collect the receivable even after the assignment. NORDMANN's authority to effect collection of the receivable itself shall remain unaffected by the foregoing, but NORDMANN hereby undertakes not to collect the receivable for so long as the customer continues to properly perform its payment obligations.



NORDMANN may demand that the customer disclose to it the assigned receivable and the identity of the debtor, that the customer provide it with all such details as are necessary for collection thereon and that the customer deliver all related documents to it and notify the debtors of the assignment. Where the goods are re-sold together with other goods not belonging to NORDMANN, then the purchaser's receivable claim against its customer shall be deemed assigned to NORDMANN in the amount of the delivery price agreed between NORDMANN and the customer.

- e) The customer is not entitled to make any other dispositions with respect to the reservation of title goods; in particular, the customer may not pledge the goods or create a chattel mortgage over the goods. The customer shall ensure, by making an express declaration to the secured party, that the goods are excepted from the coverage of any chattel mortgage which may be created over an entire warehouse. NORDMANN hereby undertakes to release collateral to which it is entitled to the extent that the value thereof exceeds the receivables to be secured (provided that they have not yet been paid) by more than 20%.
- f) The purchaser shall carefully store the reservation of title goods and shall sufficiently insure them against the usual risks, at its own cost and expense.
- g) If the law of the country in which the delivered goods are located does not permit reservation of title, but does permit the seller to reserve other rights to the goods, then NORDMANN may exercise all rights of this kind. The customer shall cooperate with respect to measures NORDMANN wishes to take in order to protect its ownership right or another right to the goods in lieu thereof.

## **7. Warranty and compensatory damages**

Claims under the Austrian Product Liability Act shall remain unaffected by the provisions set forth below.

- a) NORDMANN shall only bear liability for defects of the goods sold that are not insignificant if the customer provides us with written notice thereof without delay upon discovery, but in any event no later than 10 days from the date the goods were delivered.
- b) In the event a valid notice of defects is given, the customer shall be obliged at NORDMANN's request to allow a neutral expert to document the quality and characteristics of the goods. The customer's claims for defects of the goods shall be deemed to lapse if the customer fails to give NORDMANN or its sub-supplier the opportunity to inspect the defects asserted at the customer's location or fails to provide samples without delay upon NORDMANN or its sub-supplier's request. Furthermore, all of the customer's claims for defects shall be deemed waived if processing of the goods is not immediately ceased upon discovery of the defects or commingling of NORDMANN's goods with goods of other manufacturers is not immediately stopped until such time as NORDMANN or its sub-supplier expressly approves the release of the goods. At the same time, the customer shall notify NORDMANN of the identity of the purchaser of the products to whom the goods were supplied.
- c) NORDMANN disclaims liability for consequences arising from improper use of the goods or from the failure to observe guidelines for use provided by NORDMANN.
- d) Where not-insignificant material defects are present, NORDMANN shall, at its option, eliminate the defect or replace it with a defect-free item of goods (supplemental performance). Where following NORDMANN's second attempt at effecting supplemental performance, it is determined that the elimination of the defects or the replacement deliveries are unreasonably delayed, have become frustrated or have failed, the purchaser may abate the purchase price, rescind the contract or demand compensatory damages in lieu of NORDMANN's performance of the contract. Where the customer elects to rescind the contract, then it shall not be entitled to assert any claims for compensatory damages for the defect in addition to such rescission.

- e) Claims of the purchaser shall be deemed prescribed one year from the date the goods were delivered to the purchaser.
- f) In cases of slight negligent breach of material contractual obligations, our liability to pay compensatory damages shall be limited to such losses as are foreseeable and typical for the contract and shall, at a maximum, not exceed the double invoice value of the goods in question.
- g) If the customer's end customer makes claims against it for reasons which may have their origins in the defectiveness of the goods sold, then the customer shall notify NORDMANN thereof without delay. In addition, the customer shall permit its end customer to pursue litigation against it for compensatory damages except where NORDMANN acknowledges its obligation of indemnity to the customer or to the customer's end customer or waives the need for court proceedings. Where the customer is sued by its end customer, the customer shall afford NORDMANN the opportunity to join the litigation.
- h) The purchaser shall assume responsibility for all claims which may be directed against NORDMANN on the basis of any infringement of intellectual property rights of third parties by importing or using the goods supplied by NORDMANN, provided that such infringement is not based on NORDMANN's intentional act or omission or gross negligence.

#### **8. Place of performance**

The place of performance is NORDMANN's registered office. The place of performance for all obligations of the customer shall be the registered office of the seller (NORDMANN).

#### **9. Jurisdiction and venue and choice of law**

The contract shall be governed by Austrian substantive Law to the exclusion of the Convention on the International Sale of Goods (CISG).

If NORDMANN is the claimant, then it may also bring an action in the courts with jurisdiction over the customer's registered office.

The courts having jurisdiction over NORDMANN shall have exclusive jurisdiction for any dispute arising out of or in connection with this agreement. NORDMANN may, however, in its discretion sue the customer in the court having personal jurisdiction over the Customer.

#### **10. Miscellaneous**

In the event of legal invalidity of or amendment to any individual sections hereof, these terms and conditions shall remain binding and valid in all other respects. The parties shall be deemed to have agreed to a provision coming the closest to the commercial purpose of the invalid term.

Transactions with legal entities under public law and special funds under public administrative law shall be deemed the equivalent of transactions with entrepreneurs.

#### **Nordmann, Rassmann Handelsges.m.b.H**

SCS B1/12, 2334 Vösendorf, Austria

Telefon: +43 1 60918 48

Telefax: +43 1 60918 499

E-Mail: [info-at@nordmann.global](mailto:info-at@nordmann.global)

Internet: [www.nordmann.global](http://www.nordmann.global)

Version: January 2013