

## **General Terms and Conditions of Nutz GmbH**

Version: February 2018

### **1. Common regulations for works, repairs and sales**

#### **1.1 Scope**

1.1.1. All our deliveries, services and quotations are made exclusively on the basis of these General Terms and Conditions. They are an integral part of all our contracts and shall apply to current and future business relations, even if they are not expressly included once again. The decisive version of the General Terms and Conditions shall be the one that is respectively in effect at the time of the conclusion of a contract and is published on our website.

1.1.2. Consumers in the sense of these General Terms and Conditions are natural persons with whom we enter into business relations and who are not acting in the course of a commercial or self-employed activity.

Entrepreneurs in the sense of these General Terms and Conditions are natural or legal persons or persons with legal capacity and companies with whom we enter into business relations and who are acting in the course of a commercial or self-employed activity.

Customers in the sense of these General Terms and Conditions are both, consumers and entrepreneurs.

1.1.3. Deviating, contradictory or supplementary General Terms and Conditions shall not become part of a contract, unless their validity is expressly agreed in writing.

#### **1.2. Conclusion of a contract**

1.2.1. Our quotations are subject to change and shall be regarded as a non-binding invitation to place an order. Our online presentation of goods is not a quotation, but a non-binding invitation to the customer to place an order. Technical modifications and alterations in shape and/or colour shall be reserved within the limitations of acceptability.

1.2.2. By ordering the goods / the works, the customer declares obligatorily his intention to buy the ordered goods / works. We shall be entitled to accept the contractual offer implied in the order within two weeks upon receipt. The acceptance may be declared either in writing or by the actual delivery of the goods / starting of the works.

1.2.3. For consumers, the objection periods specified in the German Civil Code (BGB) shall apply. Consumers may withdraw their order within 14 days without giving reasons. Already received payments will be returned within 14 days after receipt of the objection. If the works had already started in the meantime, the payment of a reasonable sum for the spent working time, the already effected material supplies and related procurement and return costs is agreed.

1.2.4. All our contracts are subject to our correct and punctual self-delivery and we reserve the right to make part performances or not to perform at all. This shall only apply if we are not responsible for the failure of our suppliers to deliver correctly and punctually.

1.2.5. The customer will be informed immediately if the ordered goods are not at all or only partly available. Already made payments will be reimbursed without delay.

1.2.6. The quality of the ordered goods is determined in the manufacturer specifications or the respective product descriptions. Deviating features need to be expressly agreed, as they will be included in the subject-matter of the contract.

1.2.7. The exchange or return of software, software licenses or releases and/or client access licenses for any software are generally excluded by the manufacturers, therefore, we also exclude the exchange and return of these products.

#### **1.3. Payment, default in payment**

1.3.1. Unless agreed and/or quoted otherwise, the prices in our quotations shall be binding for the period of 90 days from the date of the quotation.

1.3.2. The offered unit prices shall only be valid if the complete scope of services is ordered. The quantities specified in an individual quotation are only estimated and, unless agreed otherwise, without any commitment.

1.3.3. Unit prices in contracts with consumers do not include statutory VAT (without packing charges) unless expressly specified in our quotation. In all other cases, the unit prices are "net plus applicable statutory VAT" as usual in the handicraft business.

Delivery and shipping costs are not included in our prices.

- 1.3.4. Unless agreed otherwise in writing in contracts with entrepreneurs, our prices are calculated ex works exclusive packing costs and applicable VAT. Packing costs will be charged separately.
- 1.3.5. Unless agreed otherwise, payments must be made directly to one of our bank accounts without any deductions. The deduction of a cash discount is only permissible if it was individually agreed in writing.
- 1.3.6. Unless agreed otherwise, our invoices must be paid in full within 14 days upon receipt. Possible part payments need to be agreed in writing.
- 1.3.7. If the customer is completely or partly in default of payment, he has to pay default interest at the respective statutory rate from this time onwards, independent of all the other rights the supplier may have. At present, these are 9 percent above the base interest rate for contracts with entrepreneurs (§ 288 Section 2, German Civil Code), and 5 percent above the base interest rate for contracts with consumers (§ 288 Section 1, German Civil Code). Should the default of payment cause us a higher interest damage than the statutory one, we shall be entitled to demand it from our customer against evidence. In this case, however, the consumer shall have the opportunity to give us proof that the demanded default damage has not incurred at all or has been significantly lower.
- 1.3.8. The customer shall only be entitled to set-off his claims against ours, if his counterclaim is legally established or undisputed and his notices of defects or his counterclaims result from the same contractual relationship.
- 1.3.9. The customer shall only be entitled to execute a right of retention, if his counterclaim is based on the same contractual relationship.

#### **1.4. Limitations of liability**

- 1.4.1. Irrespective of the above regulations and the below limitations of liability, we shall be fully liable for damages to life, body and health which were caused by a negligent or intentional violation of our duties. This shall also apply for damages to life, body or health, which were caused by a negligent or intentional violation of the contractual duties by our legal representatives or vicarious agents.  
  
Further, we shall be liable for damages which are covered by the liability under the German Product Liability Act and for damages which were caused by an intentional or grossly negligent violation of contractual duties or by fraud of our legal representatives or our vicarious agents. If we provided a quality or durability guarantee for the delivered goods or parts thereof, we shall also be liable within the limitations of this guarantee. For damages, which were caused by the missing of a guaranteed quality or durability, but do not occur directly at the goods, we shall only be liable if the risk of such a damage is clearly covered by the quality and durability guarantee.
- 1.4.2. We shall also be liable for damages which were caused by simple negligence, if this negligence concerns the violation of such contractual duties which are of major importance for the fulfilment of the contractual purpose (cardinal duties). We shall however only be liable if the damages are typical for this kind of contract and foreseeable. We shall not be liable for simple negligent violations of auxiliary obligations which are not essential for the contract. This limitation of liability shall also apply in so far as the liability for legal representatives, executive employees or any other vicarious agents is concerned.
- 1.4.3. Any further liability shall be excluded notwithstanding the legal nature of the asserted claim. If our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff members, legal representatives and vicarious agents.

#### **1.5. Miscellaneous**

- 1.5.1. The laws of the Federal Republic of Germany shall apply. The regulations of the UN Convention on Contracts for the International Sale of Goods shall not be applicable.
- 1.5.2. If the customer is a fully qualified merchant, a legal entity or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from a contract, exclusive claims from bills of exchange and cheques, shall be the District Court in Traunstein or the County Court in Mühldorf depending on the amount in dispute.
- 1.5.3. If one or several provisions of the contract with the contracting partner, inclusive these General Terms and Conditions, be or become invalid in full or partly, the validity of the remaining provisions shall in no way be affected. In such a case, the provision which is invalid in full or partly shall be replaced by a provision, the commercial success of which comes as close as possible to the invalid ones.

## **2. Terms of Sale**

### **2.1. Passing of the risk**

- 2.1.1. The risk of accidental loss and accidental deterioration of the sold goods shall pass to the consumer at the time of handing-over; this shall also apply for sales by dispatch.
- 2.1.2. The risk of accidental loss and accidental deterioration of the goods shall pass to the entrepreneur at the time of handing-over, in case of a sale by dispatch at the time of the delivery of the goods to the forwarding agent, the carrier or to any other person or institution ordered to carry out the delivery.
- 2.1.3. The handing-over of the goods shall be deemed effected if the buyer is in default of acceptance.

### **2.2. Warranty and liability for defects**

- 2.2.1. Any warranty claim will cease to exist, if our operating and maintenance instructions are not observed, the goods are modified, component parts are exchanged or materials are used which are not equivalent to the original components.
- 2.2.2. If the purchase is a commercial transaction for both parties, the customer has to examine the delivered goods immediately as regards quality and quantity, and, if there is a defect, to inform us about the defect in writing, otherwise the assertion of a warranty claim shall be excluded.  
If the buyer is a merchant, he has to give written notice about hidden defects within a period of one week from the time of the discovery of the defect. It is sufficient to send the claim for warranty in due time to keep this deadline. The merchant shall bear the full burden of proof that his claims are justified and that the defect exists, for the time of finding the defect and that the notice of the defect had been sent in due time.
- 2.2.3. Consumers shall have the choice between subsequent improvement and replacement of the defective goods. We shall be entitled to renounce the selected subsequent performance, if it will cause unreasonable costs and the other way of subsequent performance does not have any substantial disadvantages for the consumer.  
  
If the customer is a merchant, we will have the choice to repair the defective goods or replace them by a non-defective article.
- 2.2.4. If the subsequent improvement is not successful, the customer shall have the right to select between a reduction of the purchase price and the rescission from the contract and a claim for compensation. If there are only minor defects, the buyer shall not be entitled to rescind from the contract. If the customer decides to claim for compensation, the limitations of liability according to Clause 1.4 of these General Terms and Conditions shall apply.
- 2.2.5. The warranty period for consumers is two years from the delivery of new goods and one year from the delivery of used goods. The warranty period for merchants is one year from the delivery of new goods and shall be excluded for used goods.  
  
For damage claims incurred by intent and gross negligence and injuries to life, body and health, which were caused by an intentional or negligent violation of contractually, agreed duties through us, our representatives or vicarious agents, the statutory limitation period shall apply.  
Our liability under the German Product Safety Act shall remain unaffected.
- 2.2.6. On principle, only the product description of the manufacturer shall constitute the agreed quality of the products. Public statements, promotion or advertisements of the manufacturer shall not represent a contractually binding product description.

### **2.3. Reservation of title**

- 2.3.1. We reserve title to the delivered goods until the purchase price incl. VAT has been paid in full. With deliveries to entrepreneurs, we reserve title to the goods until all the existing or later arising claims from a running business relation have been fully satisfied.
- 2.3.2. As long as title has not yet passed, the customer shall be obliged to treat the merchandise carefully. The customer shall especially be obliged to insure the goods adequately at their original value against damages caused by theft, fire and water. If maintenance and service works are necessary, the customer has to perform them regularly at his own cost. As long as title has not yet passed, the customer has to inform us in writing, if the delivered product was seized or exposed to any other interventions by third parties. If the third party is not able to reimburse us the court and out-of-court costs for a lawsuit according to § 771 ZPO (Code of Civil Procedure), the customer shall be liable to reimburse the loss incurred by us.
- 2.3.3. If the contractor treats and processes the goods to which we retain title, this shall always be in our name and on our behalf. The vested right of the customer in the delivered goods shall continue for the treated and processed goods.
- 2.3.4. If the goods which are subject to reservation of title are processed, mixed or mixed up with other products or materials which have not been provided by our company or are not owned by us, we shall gain co-ownership in the newly emerging goods to the percentage of the objective value of the goods to which we retained title and the other processed goods at the time of processing. If the goods are mixed up in such a way that the goods of the customer

constitute the main product, it is agreed that the customer transfers the respective co-ownership to us and keeps for us the arising full ownership or co-ownership.

- 2.3.5. The contractor shall be entitled to sell the goods which are subject to reservation in the due course of his business. Already at this stage, he assigns the claims equivalent to the invoiced sum, which he may have as against a third party due to a resale. We herewith expressly accept this assignment. After the assignment, the contractor shall be entitled to collect this receivable. We reserve the right to collect the receivables by ourselves if the contractor does not comply with his payment obligations and is in delay of payment.
- 2.3.6. If the buyer incorporates the goods which are subject to reservation into a piece of land on behalf of a third party, the customer shall assign to us such claims which accrue to him due to the incorporation of the goods with a piece of land. We herewith expressly accept this assignment.
- 2.3.7. If the buyer behaves contrary to the terms of the contract, especially if he is in default of payment, we shall be entitled to rescind from the contract and to demand the goods which are subject to reservation back, and, if applicable, to demand the assignment of the customer's claims for restitution of property as against third parties.

### **3. Terms of performance and repair**

#### **3.1 General**

- 3.1.1. Building works shall be subject to the German Construction Tendering and Contract Regulations (VOB), sections B and C as a whole.
- 3.1.2. Offers remain our property and are intended for the internal use of our customers. We object to any other use or transfer to third parties. If these documents or parts thereof are handed over to third parties, especially for the purpose of getting further quotations, we shall be entitled to invoice the customer for the expenses incurred for the offer preparation on the basis of the usual remuneration under HOAI and/or at the normal local rates.
- 3.1.3. All the documents being part of our quotations, such as illustrations, drawings, etc. are only roughly true to dimension and weight, unless the dimensional and weight accuracy had been expressly attested. We reserve any and all property rights and copyrights for these documents. They may not be misused or made available to third parties without our consent. If no order is placed, the documents must be returned to us.
- 3.1.4. Works which are not usual in our line of business, e.g. works of a bricklayer, painter, dry machining worker, roofer or metal worker, are not included in our quotation unless expressly specified.

#### **3.2 Delivery dates / installation periods:**

- 3.2.1. The delivery and/or completion dates specified in our quotations are estimated and as such without commitment, unless expressly agreed otherwise in writing. Also in this latter case, they shall only be binding in so far as the compliance with these dates is not made impossible by circumstances which are not under our control. These circumstances include alterations or missing documents which are required to complete the order.
- 3.2.2. Two weeks after the expiry of delivery times and dates, which had not been expressly indicated as fixed dates in the order confirmation, the contractual partner can set a reasonable time limit for the delivery/performance. We will not be in default of delivery or performance until this grace period has expired.
- 3.2.3. Self-deliveries shall be reserved.
- 3.2.4. We shall be entitled to make part deliveries and part performances if they are reasonable and acceptable for the customer.
- 3.2.5. If the contractual partner has a right of rescission stipulated by contract or by law and we grant him a reasonable time to exercise it, this right of rescission will expire if the rescission is not declared before the expiry of the deadline.
- 3.2.6. In case of default, the contractual partner will only have a claim under § 8 No.3 VOB/B if for the beginning of the project and for the time of its completion a calendar date had been agreed in writing and the contractual partner had granted a reasonable additional grace period after the expiry of this deadline and had declared he would withdraw the order if the additional grace period expires unsuccessfully
- 3.2.7. The offered services will be carried out during our normal business hours, unless expressly agreed otherwise. These are Monday to Friday from 6am to 6pm.

Works performed beyond these times will be invoiced with the normal collective agreement surcharges. These are:

- Saturday from 6am to 6pm:	25%
- Monday - Saturday from 6am to 10 pm:	25%
- Night work:	
Monday - Saturday after 10pm:	60%;
Sunday and holidays:	100%
- Easter / Pentecost / Christmas / 1 <sup>st</sup> May:	150%

### **3.3. Prices, Invoicing and payment conditions:**

- 3.3.1. Payments will be made according to the regulations of the VOB/B.
- 3.3.2. Part payments in accordance with the completed performance progress have to be made for orders which take more than one month. The regulations of the German Civil Code and/or the VOB/B shall apply.
- 3.3.3. Retentions as a security, e.g. to guarantee that the contractual obligations will be fulfilled or to cover warranty claims shall only be valid if they were expressly agreed in writing.
- 3.3.4. If additional services become necessary, additional quotations can be ordered by the customer and/or provided by Nutz. If additional services are made by order of a person who is authorized to do so before a subsequent price agreement was made, these services will be invoiced at a reasonable local price.
- 3.3.5. If unit prices are agreed, only the actually incurred and measured quantities at the rates specified in the respective quotation will be charged. On principle, data lines will be invoiced according to the related measurement record plus 10 % for waste material. In addition, the basis is that the works can be carried out during the normal office hours without interruption and without being hindered from working.
- 3.3.6. If invoicing according to working time and material expenditure is agreed, e.g. for unforeseeable works ordered on site by an authorized person (direct labour), we will invoice our customers on the basis of submitted evidences of spent working time and required material according to the actual expenditure. We will invoice the used material, the working and travel time and the service time of vehicles, machines and measuring devices and, if applicable, cash expenses, each time plus a reasonable local surcharge for business risk and profit. Unless agreed otherwise, the hourly rates of the respectively valid price list of Nutz GmbH, which we will send you on request, shall apply. In cases of dispute, reasonable hourly rates plus a reasonable surcharge for business risk and profit shall be applicable. Material supplies will be invoiced according to the respectively valid gross list prices for wholesalers and/or of the manufacturers with the exception of the company Rittal.
- 3.3.7. If in our quotation lump sums for the travel to and from the building site or any other driving times are stated, they only mean the costs for the said vehicle incl. its equipment with standard tools, small machines, small measuring devices and standard sundries, unless expressly stated otherwise in the quotation or unless otherwise agreed in writing.  
These costs for driving times of the personnel are not included. They will be calculated according to expenditure, whereas driving time is considered to be working time. Service call-outs with a working time of less than 3 hours will however only be charged with 80% of the driving time lump sums. The currently applicable price list of Nutz GmbH, which we can send over on request, shall be applicable.
- 3.3.8. The contractual partner shall only have a right to set-off his claims, if his counterclaims are legally established or undisputed. The contractual partner shall only have a right of retention, if his counterclaim is based on the same contractual relationship. If the contractual partner is a businessperson, the retention or the set-off of payments due to existing counterclaims shall only be permissible if these counterclaims are undisputed or legally established.

### **3.4. Acceptance**

- 3.4.1. Acceptance may not be refused because of a defect which only insignificantly reduces the value or the usability of the subject-matter.
- 3.4.2. If the contractual partner renounces the acceptance or does not participate in the fixed date for the formal acceptance, we shall be entitled to complete the acceptance without the contractual partner and the contractual partner shall be obliged to accept the results of this acceptance date. Costs which arise due to a delay in the acceptance which was not caused by us, shall be borne by the contractual partner. In any case, the acceptance and/or the performed work shall be considered as accepted as soon as the contractual partner has started to use the performed work / the installed system.
- 3.4.3. Expert opinions (e.g. TÜV etc.) are basically a service which will be invoiced separately, if not expressly included in the offer, and will be charged according to expenditure (expert and his personnel) plus a 15% administration fee for the external costs.

### **3.5. Warranty**

- 3.5.1. The warranty period as against the contractual partner as an entrepreneur for any works, repairs, etc. which are not building works and for mounted material, is one year.
- 3.5.2. Building works shall be subject to the VOB as a whole and the VOB/C.
- 3.5.3. In case of a defect, the contractual partner has to grant us a reasonable period to remedy the defect. In particular, the contractual partner has to ensure that the rejected item is made available for us to be inspected and remedied.
- 3.5.4. If we are obliged to subsequently perform, we shall have the choice between removing the defect or delivering the goods once again.

- 3.5.5. If the supplementary performance fails, the contractual partner shall be entitled to reduce the purchase price or to rescind from the contract. Rescission shall be excluded if the defect is only insignificant or if a contract for building works is concerned.

### **3.6. Liability**

- 3.6.1. In case of slightly negligent failure to comply with our duties, we shall be liable for damages occurred through delay in performance only to the amount of 5% of the order value.
- 3.6.2. For all other damages, which arose due to slightly negligent failure to comply with fundamental contractual obligations and were caused by us, our legal representatives or vicarious agents, our liability shall be restricted to the foreseeable damage which is typical for that kind of contract, in the amount of not more than twice the value of the subject-matter of the order.
- 3.6.3. All the claims for damages against us shall become statute-barred at least one year after the final inspection and acceptance, independent of the legal grounds, if the contractual partner is a merchant.
- 3.6.4. The regulations of this section shall not apply for liability arising from intent; in this case, the legal regulations shall be applicable.

### **3.7. Contractor's extended right of distraint with regard to movable property**

- 3.7.1. We have the right to satisfy our claims from the order by a lien on the customer's goods which are in our possession due to the order. The lien may also be claimed because of debts from earlier completed works, deliveries of replacement parts and other performances, in so far as they are related to the subject-matter. For all other claims arising from the business relationship, the lien shall only be applicable if these claims are undisputed or legally valid.
- 3.7.2. If the article is not collected within four weeks after the request to collect it, we shall be entitled to demand an appropriate storage charge as soon as this period has expired. If the article is not collected at the latest after three months after the request to collect, our obligation for further storage and every liability for a slightly negligently caused damage or the destruction of the article shall expire. One month before the expiry of this deadline, the contractual partner will be sent a threat of sale. After the expiry of this deadline, we shall be entitled to sell the article at the current market value to get reimbursement for our claims. Profits exceeding our claims will be repaid to the contractual partner.

### **3.8. Reservation of title**

- 3.8.1. If the replacement parts which had been installed for repair purposes are not an essential part of the contract, we reserve the ownership to these installed parts until all the claims arising from the contract have been satisfied.
- 3.8.2. If the contractual partner is in delay of payment or fails to meet his obligations under the reservation of title, and we have consequently declared to rescind from the contract, we can demand to get the article for the purpose of demounting of the installed parts. The contractual partner shall bear the costs for the retransfer and the demounting of the parts.
- 3.8.3. If the repair is made on the premises of the contractual partner, the contractual partner has to give us the opportunity to demount the parts on his premises. The contractual partner shall bear all the costs for the working and travel time.

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