

NIEDAX GENERAL TERMS OF SALE AND DELIVERY

I. GENERAL PROVISIONS

1. The following terms of sale and delivery are valid for every contract entered into by the Buyer and Niedax regarding delivered goods. They are valid for all future businesses even if they have not been expressly agreed upon again. Deviating purchasing terms of the buyer which are not expressly accepted by us, are not valid for Niedax. That applies also if Niedax has not expressly rejected them. The following terms are valid also if Niedax has executed the Buyer's order without objections while knowing of his adverse or different purchase terms. Sales to private, i.e. non-business customers are not made.
2. All agreements between the Buyer and Niedax regarding the execution of the sales contracts are contained by writing in the contracts.
3. If particular provisions are legally invalid, the whole contract shall remain validity regarding in the remaining parts, except for those cases where adherence to the contract would be unacceptable for at least one contractual party.

II. PRICES AND TERMS OF PAYMENT

1. The prices indicated are net, ex works, excluding packing, the respective VAT if applicable has to be added on top.
2. Prices apply without packing costs for orders up to Euro 600 net (not including VAT). In the case of orders greater than Euro 600 net (not including VAT), we deliver free of charge to the next goods station, including packing, for sealed collection in one consignment. Haulage at the place of reception is at the expense of the customer.
3. An additional charge of Euro 10 net (not including VAT) per order is levied on minimum orders of a value of less than Euro 100 net (small orders, not including VAT). The minimum-sized packing or packing drums are made to suit requirement and are only sold in complete packing units. A surcharge of Euro 5 net (not including VAT) to cover expenses is levied per unit (packing or packing drum) for orders that deviate from the standard packing unit sizes.
4. Delivery in parts is permitted if economically reasonable for the Buyer.
5. If deliveries are to be made to construction sites, the costs for freight / transportation will be advanced by Niedax und will be invoiced to the Buyer if no freight-free delivery is applicable or had been agreed.
6. If not otherwise agreed, all payments have to be made at the latest 10 days after invoicing to allow a three per cent discount, 30 days after invoicing to allow a two per cent discount and 45 days after invoicing net without deductions. This assumes that our invoice has not been dispatched before delivery of the goods; if that may be the case as an exception, the periods for payment shall be calculated on the day of delivery.
7. If the Buyer fails to fulfil his obligations to pay, e.g. does not honour a cheque or a bill payable or ceases his payments, or when circumstances become known that put his creditworthiness into question, then the entire residual debt shall become due, even if invoices exist that have a later maturity date or other agreements have been made regarding extension of the term of payment. In this case we shall not be obliged to make further deliveries unless the customer offers advanced payment before delivery. In the event that the customer does not offer cash payment, then we shall be entitled to claim damages for non-performance.
8. The Buyer can only set off against claims which are undisputed, accepted or legally ascertained.

III. DELIVERY TIMES, DELAY

1. Compliance with set periods for deliveries presupposes the punctual submission of all the necessary documents and other obligations that are to be supplied by the ordering party. If these preconditions are not promptly satisfied, then the periods of time shall be increased accordingly; this shall not apply if Niedax is responsible for the delay.
2. In case Niedax delays performance, the ordering party shall be entitled to demand damages limited to the foreseeable, typically occurring damage, except if the delay results from a deliberate or grossly negligent breach of contract or in case of fatal or bodily injury or injury to health, with Niedax having to take responsibility for respective acts committed by representatives and agents.
3. If the Buyer can prove damages resulting from the delay in delivery, he is entitled to claim compensation of 0.3 % for each full week of delay, but not more than a total of 15 % of the price of the amount of delivery that could not be put to appropriate use because of the delay.
4. In case the dispatch or delivery are delayed at the request of the ordering party by more than a month after notification of readiness to deliver, it shall be possible to invoice the ordering party for storage for each month commenced at a rate of 0.5 %, but not more than a total of 5 %, of the price of the objects to be delivered. The contract parties remain free to prove higher or lower storage costs.
5. If the delivery times are not observed as a consequence of force majeure, e.g., mobilization, war, insurrection, or similar events like strikes or lock-outs, then the periods of time shall be extended accordingly.

IV. PASSING OF RISK, RECEIPT, TAKING BACK

1. The risk, including for carriage paid delivery, is passed to the ordering party as follows:
 - a) In the case of deliveries without mounting or installation, when they are handed over to the transport agent or to the ordering party in case of collection by themselves. At the request and expense of the ordering party deliveries will be insured by Niedax against the usual transport risks;
 - b) In case of deliveries including mounting or installation the passing of risk is on the day of acceptance within the ordering party's premises, or, if agreed, after a faultless test operation.
2. If the ordering party is responsible for delays in dispatch, delivery, the commencement or execution of the mounting or installation, acceptance at the ordering party's premises or the trial operation, or if the ordering party delays acceptance for any other reason, then the risk shall be transferred to the ordering party.
3. The ordering party may not refuse to accept deliveries for the reason of slight defects. The recipient is responsible for the proper unloading of the goods at the place of receipt.
4. Returns of goods have to be coordinated with the concerned person dealing with the case. Articles which are especially produced and not fit for warehousing are exempt from taking back.

V. RETENTION OF TITLE

1. The delivered goods shall remain our property until all our claims arising from the business relationship have been settled. The delivered goods may only be sold in the due course of business either for cash payment or by transferring our reservation of ownership to the buyer. They may not be pledged nor assigned nor transferred by the customer.
2. The Buyer may sell or utilize the goods subject to retention of title for proper business purposes, unless he is in delay of payment. The customer herewith assigns to us all his future claims from release of the reserved goods. This assignment shall apply both for the full value and for the partial value corresponding to our coownership share of the goods sold. The assignment shall remain valid until all our claims have been paid in full. We hereby accept this assignment. The thus originated sole or partial ownership will be kept by the Buyer on our behalf.
3. We authorize the Buyer revocably to collect payments regarding the assigned claims - as long as he continues to fulfil his obligations towards us and does not become bankrupt. The sums received shall be transferred to us immediately when our claims are due.
This authorization can be revoked anytime if the Buyer does not adhere to his payment obligations. The Buyer is not entitled to assign the claims to other parties, e.g. in a system of debt collection by factoring, except if at the same time the factor accepts the obligation to pay the consideration directly to us as long as claims by us exist against the Buyer.
4. If the goods are combined or merged with other items, we gain co-ownership regarding the new item, corresponding to the value of our reserved goods in relation to the value of the other goods at the time of processing. If the goods subject to retention of title are processed by the customer, each processing takes place for us.
5. In the case of neglect of duty by the Buyer, esp. delay of payment, we are entitled to the retraction of the goods subject to retention of title as well as to the withdrawal from the affected deal. The performance of retraction or of claiming the retention of the goods only means a withdrawal if we declare it expressly to be.
6. The customer shall immediately inform us of any third-party judicial enforcement measures against the reserved goods or claims assigned to us in advance. Such information must be accompanied by the documentation required for intervention.

NIEDAX GENERAL TERMS OF SALE AND DELIVERY

VI. WARRANTY FOR MATERIAL DEFECTS AND LIABILITY

1. Claims for defects can only be made if the Buyer adhered to his obligation under § 377 HGB to properly examine and if necessary notify Niedax of defects.
2. In case of a defect, the Buyer has to give Niedax the opportunity for supplementary performance within reasonable time. The supplementary performance is deemed failed after unsuccessful attempts, if not more attempts are appropriate and just and reasonable for the buyer, regarding the contractual item. If the supplementary performance has failed, the Buyer is entitled – notwithstanding possible claims regarding damages – to withdraw from the contract or to reduce the remuneration. Damages resulting from defects cannot be claimed before the supplementary performance has been attempted twice (at least) unsuccessfully, except regarding damages under Clause VIII.
3. Claims on the part of the Buyer for expenses necessary for the purpose of remedying defects, will be borne by Niedax assumed that they are necessary and are not increased because the object of delivery has afterwards been taken to a place other than the premises of the ordering party, unless such movement complies with its use in accordance with the regulations.
4. Claims for only minor deviation from the agreed quality cannot be accepted. We must therefore reject claims for only minor impairment to fitness for use, or for natural wear and tear, or for damage arising after the transfer of risk as a result of faulty or negligent handling, excessive stress, unsuitable operating materials, defective building works, unsuitable building ground, or occurring as a result of other external influences that have not been presumed according to the contract. In case the ordering party or a third party carries out inexpert repairs or changes, there no right for claims will be granted by Niedax for defects caused by these works or the consequences of them.
5. We are liable according to the law for damages to life, body and health that result from an intentional or negligent neglect of duty committed by us, our representatives or agents, as well as for damages that are fall within product liability laws. We are liable for damages not included in the first sentence which result from intentional or grossly negligent breaches of contract as well as in case of fraudulent concealment of a defect committed by us, our representatives or agents, following the legal provisions. In those last mentioned cases however our liability is limited to the foreseeable, typically occurring damage, except when we or our representatives or agents have acted intentionally.
6. We are liable for damages that are caused by us by slight negligent neglect of contractual obligations whose fulfillment is indispensable for the contractual performance and in whose compliance the Buyer fundamentally and justifiably trusts (fundamental contractual obligations). Our liability is however limited to damages that are typically related to the contract and foreseeable.
7. In accordance with § 478 BGB (Rückgriff des Unternehmers [Contractor's Recourse, § 478 BGB]), the ordering party's rights of recourse against Niedax only exist in so far as the ordering party has made no agreements with its supplier that extend beyond the legal claims for defects.
8. Claims for material defects are subject to a limitation period of 12 months. This restriction shall not apply in so far as the law prescribes longer periods in accordance with §§ 438, Par. 1 No. 2 (Bauwerke und Sachen für Bauwerke [Buildings and Items for Building]), 479 Par. 1 (Rückgriffsanspruch [Right of Recourse]) and 634a Par. 1 No. 2 (Baumängel [Building Defects]) of the BGB [German Civil Code], and in cases of injury to life, health or bodily injury, in case of an intentional or gross carelessness on the part of Niedax, and in case of fraudulent concealment of a defect.

VII. IMPOSSIBILITY; ADAPTATION OF CONTRACTS

1. If delivery is impossible, the ordering party shall be entitled to demand compensation, unless Niedax is not responsible for the impossibility. The claim for damages on the part of the ordering party is, however, limited to 15 % of the value of that part of the delivery that cannot be put into appropriate operation due to the impossibility of delivery. This limitation shall not apply in so far as there is absolute liability in cases of intent or gross negligence or in the event of fatal or bodily injury or injury to health; this is not associated with any change in the burden of proof to the disadvantage of the ordering party. The right of the ordering party to withdraw from the contract remains unaffected.
2. If unforeseeable events in the sense of Item III No. 5 significantly change the economic importance or content of the delivery or have a significant effect on the working activities of Niedax, the contract shall be reasonably adapted respecting good faith. If this is not economically justifiable, Niedax shall have the right to withdraw from the contract. If he wishes to avail himself of this right to withdraw from the contract, then he shall undertake to inform the ordering party of the fact immediately, having determined the extent and consequences of the event; this shall also apply if an extension of the delivery time has first been agreed with the ordering party.

VIII. FURTHER CLAIMS TO DAMAGES

1. Claims to damages and expenses by the Buyer (hereafter: damages), whatsoever the legal reason, especially resulting from a neglect of contractual obligations or from an unlawful act, are excluded.
2. The aforesaid exclusion is not valid insofar as there is mandatory liability by law, e.g. under product liability law, in cases of intentional or grossly negligent acts, damages to life, body and health and neglect of fundamental contractual obligations. Our liability regarding the neglect of fundamental contractual obligations is however limited to damages typically related to the contract and foreseeable, except with intentional or gross negligence and with damages to life, injuries, impacts on health. This is not associated with any change in the burden of proof to the disadvantage of the ordering party.
3. The Buyer's claims to damages mentioned here in Art. VIII expire after the end of the limitation period according material defects under Article VI paragraph 8. In case of titles to claim according to the Product Liability Act the legal rules regarding the limitation period will apply.
4. The 12 months limitation period also applies to measures to remedy the damages, especially to product recalls.

IX. PLACE OF PERFORMANCE, OF JURISDICTION AND APPLICABLE LAW

1. Place of performance of deliveries and payments is Linz/Rhine. The sole place of jurisdiction for all disputes arising directly or indirectly out of sales contracts between Niedax and the Buyer (including action on a dishonored cheque or bill payable) shall be governed by the place of performance, too. Niedax shall, however, also be entitled to bring an action at the domicile of the ordering party.
2. The legal relationships between the contractual parties shall be governed exclusively by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

X. SETTLEMENT OF CONSUMER CLAIMS

Companies of NIEDAX GROUP do not enter into contractual relationships with consumers in accordance to § 310 fig. 3 BGB as our products are exclusively delivered to authorized distributors and commercial customers.

For this reason we are not participating in any settlement procedure for claims from consumers in any Consumer Arbitration Centre. However, in accordance to the German law on alternative settlements of consumer claims we are obliged to inform about the relevant authority for settlement of consumer claims (Consumer Arbitration Centre):

Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V.
Straßburger Str. 8
77694 Kehl
Internet: www.verbraucher-schlichter.de

As of 09/2020