



novotruck GmbH – Rothenfelder Straße 56 – D-33775 Versmold

## General Terms of Purchase (valid as of January 2007)

### I. Scope

1. The following General Terms of Purchasing shall apply to contracts of any and all German companies of the novotruck GmbH group.
2. In business transactions between this company and any other company, public corporation and/or legal entity under public separate fund assets the following terms of business are applicable to the exclusion of any other terms.
3. Our terms of business shall also apply to all future business relation.
4. Any terms and conditions of our contractual partner which deviate from these conditions shall be invalid.
5. These terms shall apply even if we carry out a business transaction in the full knowledge that the terms of trade of our contractual partner are diametrically opposed to, or deviate from, ours.
6. Our terms of business shall apply to the extent to which no other terms have been agreed with our contract partners in writing.

### II. Applicable Law

Unless our terms of trade contain special provisions, the laws governing the relations between domestic parties at our registered office (German law) apply under exclusion of any foreign law. The UN Convention on the International Sale of Goods (CISG) shall be excluded.

### III. Place of Performance

The place of performance for all obligations arising from the order shall be our registered office.

### IV. Non-Disclosure

1. Any information and all documents, technical or commercial know-how including but without limitation to illustrations, drawings, calculations, which we mark as being confidential must be treated strictly confidential. None of our contract partners is allowed to disclose any confidential information to any third party unless with our express written information.
2. Confidential information which has been made available must only be used for attaining the purpose of the contract. On completion or termination of the contract all confidential documents provided by us must be returned immediately and without our request required
3. The obligation of secrecy survives the completion or termination of the contract.
4. The obligation of secrecy becomes ineffective if and to the extent to which the contents of the documents or information enter the public domain.
5. Other rights, in particular, ownership, trademarks and copyright, are reserved.

### V. Set Off and Retention

No contract partner is entitled to set off any claim against any amount owing to us unless the counterclaim is undisputed and part of a non-appeal able declaratory judgment. A contract partner's right of retention is limited to claims under the same contractual relationship.

### VI. Transfer of Rights and Obligations

No contract partner is entitled to transfer or assign any rights or obligations without obtaining our written agreement. Where the assignment involves a financial claim, we are entitled to make payment to our contract partner as if the claim had not been assigned.

### VII. Orders

Our orders are only binding if they are made in writing or if they have been confirmed in writing following a oral order or an order given by telephone.

### VIII. Prices

1. The prices given in our orders are fixed prices. They are inclusive of the current rate of value-added tax. In the case of "carriage paid" they include packaging and for imports they include import duties and other levies.
2. If we agree with a contractual partner to deliver "prices subject to confirmation", then the price shall be the one valid on the day of delivery.
3. In the case of a contractual agreement which foresees the regular call-off of goods by us or regular deliveries to us, our contractual partner hereby agrees to consider price changes in our favour even if prices have been fixed, in particular if he reduces his prices in general or for a number of his customers.
4. Paragraph 3 shall also apply to contracts where we wish to call off the goods four months after finalising the contract or later, drawing up of offers, brochures, cost estimates, etc. if this has been expressly agreed with us.

### IX. Nature of the Goods

1. If, when we order, we refer to drawings, diagrams, calculations, plans and tolerances which have been provided, then we hereby agree with our contractual partner that the nature and features based on these should represent the contractual quality which is to be supplied. This also applies to the outward appearance and the marking of the goods in accordance with our instructions.
2. The provision of drawings, diagrams, calculations, plans, and tolerances by us does not relieve the contractual partner from his obligation to check these

for accuracy and suitability for the production and supply of the ordered products.

3. If our order is based on samples, patterns or specimens, then the contractual partner hereby guarantees that this is the quality which he will deliver.

4. If we order on the basis of earlier orders or within the framework of a permanent agreement to supply several products of the same type, then the contractual partner shall be obliged to inform us before delivering to us of any changes in any specifications, production or production process, the composition of the goods and any ingredients as well as any changes in sub-suppliers.

5. Any product changes against our order regarding quantity and quality and any other subsequent changes to the contract shall be deemed agreed only if they have been expressly approved by us in writing.

### X. Packaging

1. The return of packaging requires a special agreement. If the return of packaging material has been agreed, then any return shall be at the risk and for the cost of our contractual partner.

2. At our request and at his cost, our contractual partner must take back and/or dispose of non-recyclable packaging material. If he does not do so, despite being set a deadline, then he must reimburse us for any costs which we incur and any resulting damages.

### XI. Delivery and Late Delivery

1. The delivery deadlines agreed in our order are binding. The delivery period shall commence on the order date.

2. The goods must have been received by us or at a point of reception stipulated by us within the time allowed for delivery or on the deadline itself.

3. If delays are to be expected, then our contractual partner must inform us of this immediately in writing.

4. For freight deliveries, an advice note must be sent to us separately on the day of dispatch.

5. Our order numbers, the quantity and the unit of quantity, gross, net and, as necessary, the invoiced weight, article description and article number should be shown on delivery notes and packing slips. In the case of part deliveries the quantity still to be delivered should be shown.

6. For delayed deliveries we shall be able to claim against our contractual partner a one-off lump sum for damages to the tune of 1.5% of the agreed purchase price per completed calendar week - in total a maximum lump sum of 10% of the purchase price. Any further rights and claims which we have by law (withdrawal or compensation) shall remain unaffected. The contractual partner shall have the right to demonstrate to us that no damages or considerably lower damages have arisen as a result of the delay. The damages shall be set higher or lower if we show that the damages have been higher or if our contractual partner demonstrates that the damages were lower.

### XII. Buy-Off

We are not obliged to accept goods before expiry of the delivery deadline or before the delivery date.

### XIII. Invoicing and Payment

1. So that we can process invoices quickly and correctly, our contractual partner shall be obliged to put on all his invoices our order number, the quantity and the units, gross, net and, as necessary the invoiced weight, the article description with article number, and in the case of partial deliveries the amounts still to be delivered.

2. Without these details we cannot be held responsible for any delays in processing and settling the invoice.

3. If we pay within 8 days of a complete and perfect delivery of the goods and receipt of the invoice, then our contractual partner agrees to grant us a 3% cash discount.

4. Any delay caused by incorrect or incomplete invoicing shall not adversely affect the above-mentioned period for cash discount.

5. Unless the delay is caused by gross negligence or is deliberate, any compensation claim by our contractual partner in the case of a delay in payment by us shall be limited to damages which for us are typically foreseeable in such a situation, or to the damages actually announced before the commencement of the delay.

6. Unless the delay is caused by gross negligence or is deliberate, any claim to which our contractual partner is entitled in respect of compensation instead of performance shall be maximally restricted to the value of the order.

### XIV. Retention of Ownership

1. Inasmuch as we provide goods or parts to our contractual partners we reserve right of ownership in them.

2. Any processing or remodelling (reshaping, conversion) of the product by our contractual partner is done in our name. If the product is joined to, or

mixed with, other movable items, then we shall acquire part ownership in the new object to the ratio of the value of our provided product to the other items at the time of the reshaping or mixing.

3. Our contractual partner must ensure any tools, machines, machine parts or other equipment provided by us at his own cost against damage from fire or water and against theft.

4. We are entitled to take out corresponding insurance under Paragraph 3 if our contractual partner, on demand and after we have set him a deadline, is unable to demonstrate that he has insured the tools, machines, machine parts or other equipment provided by us against the aforementioned risks.

5. Our contractual partner is obliged to carry out the requisite maintenance and service work on the tools, machines, machine parts or other plant which we have made available to him at his own cost and in good time and to inform us immediately of any breakdowns.

#### **XV. Faulty Products**

1. Our company concludes quality assurance agreements with our contractual partners. Our contractual partners are obliged to carry out thorough checks on goods leaving their premises and to bring to our attention any misgivings they may have regarding any faults or deficiencies.

2. As concerns our obligation to check and complain under § 377 HGB we are only obliged to carry out a minimum check, comprising the delivery note and any transport damage.

3. In the case of a fault or deficiency we are entitled, within the framework of the obligation to completely fulfil a contract, to require from the contractual partner, at our discretion, that he put right the fault or deliver a new item. If we are entitled to withdraw from the contract, then we can limit the withdrawal to the faulty part of the order, or we can declare our withdrawal from the complete order. We shall be unreservedly entitled to all claims and rights arising from this under the law.

4. The guarantee period shall be 36 months, calculated from the time of the transfer of risk.

5. Inasmuch as we are entitled to recourse in respect of our contractual partner under § 478 BGB (Civil Code), then the period of limitation for our particular claims under §§ 437 and 478 II BGB against our contractual partner for a fault in a newly produced item sold to our buyer shall commence at the earliest 6 months after the point in time at which we met the claims of our buyer.

6. If the goods supplied by our contractual partner are faulty, and if our contractual partner can therefore also claim a re-work, replacement, assignment, repayment of (a part of) the price, compensation for costs incurred or other damages against his sub suppliers or subcontractors, then he hereby agrees, by way of precaution, to assign these claims to us which we hereby accept. This assignment for safety reasons shall cease to apply if our contractual partner has fulfilled all claims in respect of us which refer to the faulty goods. We will not disclose this assignment provided the supplier fulfils his faulty obligations towards us in a correct manner.

7. If our contractual partner has improved, exchanged, or repaired the goods supplied, or parts of them, then there shall be a new guarantee time of 36 months for the delivered or exchanged part or the repair work, from the time of the new delivery, the exchange or the hand-over of the repair work.

8. The stipulations in this section does not shorten any longer legal periods of limitation, nor does it limit the statutory provisions on the stoppage and recommencement of deadlines.

#### **XVI. Liability of our Contractual Partner**

1. If claims are made against us as a result of product liability or for other liabilities, and if our contractual partner is responsible for the fault or product damage, or if the cause results from his domain or organisational entity, then our contractual partner must release us from any liability resulting there from on first demand, inasmuch as he himself is liable via a relationship to a third party.

2. Within the framework of his liability for damages under 1), our contractual partner is also obliged to reimburse any expenses which have resulted from, or in connection with, any recall action carried out by us. Inasmuch as is possible and reasonable, we will inform our contractual partner of the content and scope of the recall measures— and will give him the chance to state his case.

3. Our contractual partner is obliged to take out corresponding third party insurance with a flat -rate cover of 3 million Euros per person/material damage. Our contractual partner must prove that he has taken out this insurance and that he is paying the premiums.

4. Our other legal claims and rights remain in place and are unaffected by the above provision.

#### **XVII. Trademark Rights and the Rights of Third Parties**

1. The supplier guarantees that in connection with his delivery, as well as via his delivery and via its contractual use by us, the rights of third parties are not infringed.

2. If a claim is made against us by a third party in this respect, then our contractual partner shall be obliged on first demand to release us from all such claims. Without the agreement of our contractual party we are not entitled to enter into any agreements with the third party, and in particular any form of settlement.

3. This obligation to exempt refers to all costs which we of necessity incur as a result of, or in connection with, any claims of a third party, or to costs which we understandably assume to be expenses incurred to correctly settle the claim.

4. The period of limitation for these claims shall be ten years, calculated from the time of the transfer of the goods or the execution of the performance.

5. Our contractual partner is obliged to inform us of any of his own trade mark rights which may exist in respect of his performance to us.

#### **XVIII. Liability**

1. If we are obliged to pay damage under applicable law and these General Terms, our liability is limited in the event of normal negligence: We are only liable for infringement of any essential duties under the contract or of any cardinal duty and our liability is limited to typical damage that was foreseeable at the time the contract was concluded. This limitation does not extend to physical injury, including death, or damage to health. If the damage is covered by an insurance concluded for the particular event by our contract partner (excluding fixed-sum insurance), we are only liable for any related disadvantage suffered by our contract partner, e. g., higher insurance premium or interest until the time payment is made by the insurer.

2. Our liability for delay is finally defined in Section XIII.

3. Any personal liability of any of our legal representatives, servants or employees for damage caused by them due to normal negligence is excluded.

#### **XIX. Contractual Language**

The language of the contract is German. If any contract documents are drawn up in a language other than German, the legal relationship between the parties, if any, is exclusively defined by the German version of the contract .

#### **XX. Place of Litigation**

For all disputes arising from this business relationship, including those arising from bills of exchange or cheques, any legal proceedings must be brought at the court having jurisdiction, both internationally and nationally, for the registered office of our company. We can bring action against our contract partner in the local court with jurisdiction over the contract partner's or any of his affiliated company's registered office.

#### **XXI. Omissions**

If it is found that any provision deemed agreed and considered necessary to be agreed between us and our contract partner in reality does not represent effective agreement, we are entitled, complementing what has been agreed, to close loophole by an effective provision giving due consideration to the interests of both parties.

#### **XXII. Severability Clause**

If it is found that any provision in a contract is or becomes ineffective, such ineffectiveness does not affect the contract as a whole. If any provision of the contract is or becomes ineffective for reasons other than §§ 305 – 310 BGB (German civil code), we and our contract partner will replace the ineffective provision by an effective one as closely as possible reflecting the economic intention of the parties. This also applies if any provision of a contract is or becomes ineffective for reasons of §§ 305 – 310 BGB (German civil code) provided that there is no provision regarding this matter in the law.