

# General Terms and Conditions of Nutz GmbH

## A. Common regulations for work performances, repairs and sales

### § 1 Scope

- All our deliveries, performances 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 be valid for all the current and future business relations, even if they are not expressly included on each occasion.
- Deviating, contradictory or supplementary General Terms and Conditions shall not become part of a contract without our express written approval, even if they are known.

### § 2 Conclusion of a contract

- Our quotations are subject to change. Technical modifications and alterations in shape, colour and/or weight shall be reserved within the limitations of acceptability.
- By ordering the goods / the work performance, the customer declares obligatorily his intention to buy the ordered goods / work performance. 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 / the starting of the work performance.
- Any contract is made subject to the correct and punctual delivery of the goods by our suppliers.

### § 3 Payment, default of payment

- Unless agreed upon otherwise, the prices given in our offers shall be valid for the period of 14 days from the date of the quotation.
- All our prices are quoted ex works including loading and excluding transport, packing and unloading. The prices specified in the order confirmation are net prices and the applicable statutory VAT must be added.
- Unless agreed upon otherwise, payments must be made directly to one of our bank accounts without any deductions.
- The contractually agreed prices shall be valid for the complete period of delivery, however at least for 4 months.
- In the event of default of payment, default interest of 8 % over the base interest rate of the German Federal Bank will be charged.
- If payment by acceptance is agreed, the contractual partner shall bear the discount charges.
- The contractual partner shall only be entitled to set-off his claims against ours, if the counterclaim is undisputed or legally established.
- The contractual partner shall only be entitled to exercise a right of retention, if his counterclaim is based on the same contractual relationship and was accepted by our company or is legally established.

### § 4 Limitations of liability

- In case of slightly negligent failure to comply with our duties, our liability shall be restricted to the foreseeable, immediate average damage which is typical for that kind of goods / work performance. This shall also apply to slightly negligent failures of our legal representatives or vicarious agents to comply with their duties. As against entrepreneurs, we shall not be liable for slightly negligent failures to comply with inessential contractually agreed duties.
- The above limitations of liability shall have no influence on any product liability claims of the contractual partner. Further, the limitations of liability shall not apply, if we caused any personal or health injury or the death of the contractual partner.

### § 5 Place of jurisdiction

- The laws of the Federal Republic of Germany shall apply exclusively. The regulations of the UN Convention on Contracts for the International Sale of Goods shall not be applicable.
- If the contracting parties are fully qualified merchants, corporate bodies or special funds under public law, the exclusive place of jurisdiction for any and all disputes under a contract, exclusive claims from bills of exchange and cheques, shall be the District Court in Traustetter or the County Court in Mühlhof, depending on the amount in dispute.

### § 6 Saving clause

If one or several provisions of the contract with the contracting partner, inclusive these General Terms and Conditions, is or becomes invalid in full or partly, the validity of the remaining provisions shall not be affected. In such a case, the provisions which are 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.

## B. Terms of Sale

### § 1 Passing of the risk

- The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the time of handing-over of the goods to the buyer, in case of a sale by dispatch at the time of handing-over of the goods to the forwarding agent, to the carrier or to any other person or institution ordered to carry out the shipment.
- The handing-over of the goods shall be deemed effected, if the buyer is in default of acceptance.

### § 2 Warranty and liability for defects

- Any warranty claim will expire, if operating and maintenance instructions of the seller are not observed, the goods are modified, component parts are exchanged or materials are used which are not equivalent to the original components.
- If the buyer is an entrepreneur, he has to give written notice of any obvious defects within a period of two weeks after receipt of the goods; otherwise, the enforcement of a warranty claim will be excluded. It is sufficient to send the notice of defects in due time to observe the deadline. The buyer shall have the full burden of proof that his claim is justified; especially, he has to prove the defect itself, the time of finding the defect and that the notice of the defect had been sent in due time.
- The seller shall first have the choice between subsequent improvement and replacement of the defective goods. If the seller decides for subsequent improvement, the buyer has to:
  - send the defective part and/or device or machine for repair purposes and the subsequent return to Nutz GmbH on their request.
  - make the defective part and/or device or machine available at his place of residence or business, so that the company Nutz GmbH will be able to have the subsequent improvement made by a service engineer.
 If the subsequent improvement is not successful, the buyer shall have the basic right to select between a reduction of the purchase price and the rescission of the contract. However, if the non-conformity with the contract is only insignificant, especially in case there are only minor defects, the buyer shall not be entitled to rescind the contract.
- If the buyer decides to rescind the contract because of a defect in title or in quality after the subsequent improvement has failed, he shall not be entitled to additionally claim damages because of the defect. If the buyer decides to rescind the contract because of a defect in title or in quality after the subsequent improvement has failed, the goods will remain with the customer, if this is acceptable for him. The compensation for damages shall be restricted to the difference between the purchase price and the value of the defective product. This shall not apply, if the seller has caused the violation of the contract fraudulently.
- The warranty period for the seller as an entrepreneur shall be one year from the delivery of the goods, except the goods in question are building materials.
- On principle, only the product description of the manufacturer shall be the agreed quality. Public statements, sales talks or advertisements of the manufacturer shall not represent any quality description of the product which is relevant for the contract.
- If the buyer gets faulty installation instructions, the seller shall only be obliged to deliver correct installation instructions, and this only if the faulty installation instructions make an orderly installation impossible.
- The customer will be granted warranties in the legal sense only from the seller. This shall have no influence on any warranties granted by the manufacturer.

### § 3 Retention of title

- The seller retains title of the delivered goods until the purchase price incl. VAT has been fully paid and all the claims against the buyer, existing at the time of delivery or arising later, have been fully satisfied. This shall also apply, if individual claims have been included in current invoices and the balance has been struck and accepted.
- If the goods which are subject to retention of title are mixed or mixed up with other materials, which have not been provided or are owned by the seller, the seller shall gain co-ownership of the complete quantity in the amount of the value of the delivered goods inclusive the invoiced VAT.
- If the buyer uses the goods which are subject to retention of title to make a new product together with other materials not provided by the seller, the seller will also gain ownership of this new product in the amount of the value of the goods which are subject to retention of title and the invoiced VAT.
- If the buyer sells the goods which are subject to retention of title, it is considered as agreed already at the time of the conclusion of the contract that the purchase price resulting from the sale will pass to the seller inclusive the invoiced VAT.
- If the buyer incorporates the goods which are subject to retention of title into a piece of land on behalf of a third party, the resulting wage claim as against the third party shall pass to the seller in so far as it includes a claim for the goods which are subject to retention of title inclusive the invoiced VAT.
- If, in an individual case, the security obtained through the assignment of a claim exceeds the value of the total amount of goods delivered by the seller more than 10 %, the latter shall be obliged to reassign accordingly.
- The buyer has to inform the seller immediately about any seizure of third parties, especially in case of an attachment of the goods which are subject to retention of title.
- If the buyer behaves contrary to the terms of the contract, especially if he is in default of payment, the seller shall be entitled to take back the goods which are subject to retention of title after a set period of ten days and, where applicable, to demand an assignment of the buyer's claims for restitution of property as against third parties.

## C. Terms of performance and repair

### § 1 General

- The performance of building works shall be subject to the German Construction Tendering and Contract Regulations (VOB), sections B and C as a whole.
- All the documentations being part of our quotations, for example illustrations, drawings etc., are only roughly true to dimension and weight, unless the dimensional and weight accuracy had been expressly confirmed. We reserve all the property and copy rights of these documentations. They may not be made available to third parties without our approval.

### § 2 Delivery times

- Unless agreed upon otherwise, the given delivery and/or completion dates are not binding. Also if they had been agreed, they will only be binding, if meeting the agreed deadlines is not made impossible for us due to circumstances beyond our control. These circumstances shall also include modifications or the failure to provide missing documents, which are necessary to carry out the order.
- Two weeks after the expiry of delivery times and dates, which had not expressly been indicated as final 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 additional respite has expired.
- Delivery times and dates shall be subject to the correct, complete and timely obtaining of the goods by ourselves.
- We shall be entitled to make part deliveries and part performances, if they are reasonable and acceptable for the customer.
- 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, his right of rescission will expire, if the rescission is not declared before the expiry of the set deadline.
- 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 time had been agreed in writing and the contractual partner granted a reasonable additional respite after the expiry of this time period and declared he would withdraw the order, if the additional respite expires unsuccessfully.

### § 3 Payment

- Payments will be made according to the regulations of the VOB/B.
- The contractual partner shall only have a right to set-off his claims against ours, if his counterclaims are legally established or undisputed. The contractual partner shall only be entitled to exercise a right of retention, if his counterclaim is based on the same contractual relationship. In business relations with merchants, the withholding of payments because of counterclaims or the set-off against counterclaims by the contractual partner is only permissible, if these counterclaims are undisputed or legally established.

### § 4 Final inspection / acceptance

- The acceptance may not be refused because of a defect which reduces the value or the usability only insignificantly.
- If the contractual partner refuses to carry out a final inspection or does not take part in the fixed date for the final inspection, we shall be entitled to go through this procedure also without the contractual partner and he shall be obliged to accept the results of this final inspection. All the costs arising due to a delay in acceptance, which was not caused by our company, shall be borne by the contractual partner. In any case, the performance and/or the assigned job shall be considered as accepted as soon as the contractual partner makes use of the performed work and/or the assigned job.

### § 5 Warranty

- The warranty period as against the contractual partner as an entrepreneur for all the work performances, repairs, etc. which are not building works and for installed material is one year.
- Building works shall be subject to the VOB/B as a whole and the VOB/C.
- 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.
- In case we are obliged to deliver a supplementary performance, we shall have the choice to either remove the defect or to make a new performance.
- If the supplementary performance fails, the contractual partner shall be entitled to reduce the purchase price or to rescind the contract. Rescission shall be excluded, if the defect is only insignificant, or if a contract for building works is concerned.

### § 6 Liability

- In case of slightly negligent failure to comply with our duties, we shall be liable for damages caused by a delay only to the amount of not more than 5% of the order value.
- For all other damages, which arise 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.
- All the claims for damages arising against us shall become statute-barred at the latest one year after the final inspection and acceptance, independent of the legal grounds, if the contractual partner is a merchant.
- The regulations of this section shall not apply for liability arising from intent; in this case, the legal regulations shall be applicable.

### § 7 Contractor's extended right of distraint with regard to moveable property

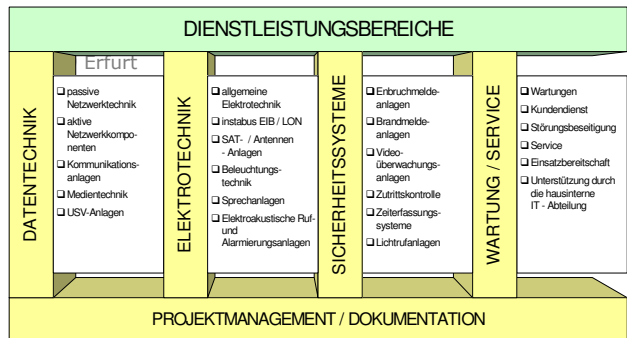
- We have the right to satisfy our claims from the order with a lien on the customer's goods which are in our possession under the order. This lien may also be claimed because of debts from earlier completed works, deliveries of replacement parts and other performances, in so far as they are related to the goods. For all other claims arising from the business relationship the lien shall only be applicable, if these claims are undisputed or legally determined.
- If the goods are not collected within four weeks after the request to collect it, we shall be entitled to demand an appropriate storage fee as soon as this period has expired. If the goods are not collected at the latest after three months after the request to collect it, our obligation for further storage and every liability for a slightly negligently caused damage or the destruction of the goods 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 goods at the current market value to get compensation for our claims. Profits exceeding our claims will be repaid to the contractual partner.

### § 8 Retention of title

- In so far as 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.
- If the contractual partner is in delay of payment or, if he fails to meet his obligations under the retention of title, and we have consequently declared to rescind from the contract, we can demand to get the goods for the purpose of dismantling the installed component parts. The contractual partner shall bear all the costs for the retransfer and the dismantling of the component parts.
- If the repair is made on the premises of the contractual partner, the contractual partner has to give us the opportunity to demount the component parts on his premises. The contractual partner shall bear all the costs for working and travel time.

Version of January 2011

## Beratung, Planung und Installation aus einer Hand



### Head office

**Nutz GmbH**  
 Zeppelinstraße 32  
 84544 Aschau / Inn  
 Tel.: (0 86 38) 96 66-0  
 Fax: (0 86 38) 96 66-19  
 E-mail: epost@nutz.com  
 http://www.nutz.com



### Branch offices

**Berlin**  
 Plauerer Str. 163 - 165  
 13053 Berlin  
 Tel.: (0 30) 3 96 92 53

**Erfurt**  
 Mittelhäuser Straße 76-79  
 99089 Erfurt  
 Tel.: (03 61) 7 91 30 03

**Länggöns**  
 Perchstetten 3  
 35428 Langgoens  
 Tel.: (06 403) 77 90 660