

# GENERAL TERMS AND CONDITIONS OF PURCHASE

of NAF Neunkirchener Achsenfabrik AG for use in business transactions with Suppliers - as of 01/2024



## 1 General provisions; scope of application

- 1.1 These General Terms and Conditions of Purchase („GPC“) govern the legal relationship between NAF Neunkirchener Achsenfabrik AG („NAF“) and its Suppliers regarding deliveries and/or services to be provided by the Suppliers to NAF (hereinafter also referred to as „Deliveries“). The GPC also expressly cover services provided by the Suppliers (e.g. spare parts deliveries, installation services). The GPC shall only apply if the Supplier is an entrepreneur [Section 14 BGB, Section 310 (1) BGB (German Civil Code)].
- 1.2 The GPC apply in particular to contracts for the sale and/or delivery of movable goods („Goods“), irrespective of whether the Supplier manufactures the Goods itself or purchases them from other suppliers [Sections 433, 650 BGB (German Civil Code)]
- 1.3 Unless otherwise agreed, the GPC in the version valid at the time of NAF's order or in any case in the version last communicated to the Supplier in text form shall also apply as a framework agreement for similar future contracts, without NAF having to refer to them again in each individual case.
- 1.4 In connection with deliveries to NAF these GPC shall apply exclusively. NAF shall not recognise any terms and conditions of the Supplier that conflict with or deviate from these GPC unless NAF has expressly agreed to their validity in writing. These GPC shall also apply if NAF allows the delivery to be carried out without reservation in the knowledge that the Supplier's terms and conditions conflict with or deviate from these GPC.
- 1.5 Individual agreements between NAF and the Supplier (e.g. framework supply agreements, quality assurance agreements) and details in NAF's order shall take precedence over the GPC. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- 1.6 Legally relevant declarations and notifications by the Supplier in relation to the contract (e.g. setting of deadlines, reminders, withdrawal) must be made in writing. Written form within the meaning of these GPC includes written and text form (e.g. letter, e-mail, fax), unless expressly agreed otherwise. Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.
- 1.7 References to the application of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GPC.

## 2 Conclusion of contract

- 2.1 The order by NAF shall be deemed binding at the earliest upon written submission or confirmation. The Supplier shall notify NAF of obvious errors (e.g. typing and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion before acceptance; otherwise the contract shall be considered not concluded.
- 2.2 The Supplier shall be obliged to confirm NAF's order in writing within a period of three (3) days or, in particular, to fulfil it without reservation by dispatching the goods (acceptance).
- 2.3 The above provisions of this clause 2 shall only apply in the event that no delivery schedule procedure or Kanban procedure has been agreed with the Supplier.

### (a) Delivery Schedule Procedure

For the delivery schedule procedure, unless otherwise specified in the delivery schedule agreement, the following applies:

Delivery schedules or updates to the delivery schedule are generated once a week and sent to the Supplier. If this is done using the standard EDI procedure, the contract shall be deemed concluded as soon as the provider of the EDI interface has retrieved the data of the (updated) scheduling agreement and made it available to the Supplier via the provider-supplier interface.

If this is done by csv file, the contract is deemed to have been concluded as soon as the csv file is received by the Supplier. The Supplier is obliged to review the delivery schedule allocations, and to report any objections within a period of three (3) days.

### (b) Kanban procedure

Unless otherwise stipulated in the Kanban agreement, the following applies to Kanban procedures:

The contract shall be deemed to have been concluded when the Supplier receives the request for delivery by automatic or manual data transmission.

- 2.4 Late acceptance by one side is considered a new offer and requires acceptance by the other side.

## 3 Delivery time and delay in delivery

- 3.1 The delivery time stated by NAF in the order shall be binding. If the delivery time is not specified in the order and has not been agreed otherwise,

it shall be one week from the conclusion of the contract.

The Supplier is obliged to inform NAF immediately in writing if it is unlikely to be able to meet the agreed delivery times for whatever reason.

- 3.2 If the Supplier fails to provide its services or does not do so within the agreed delivery time, or if the Supplier is in default („Verzug“), NAF's rights – in particular to withdrawal and compensation for damages – are determined in accordance with the statutory provisions. The provisions of para. 3 shall remain unaffected.
- 3.3 If the Supplier is in default, NAF may – in addition to further statutory claims – demand lump-sum compensation for the damage caused by delay in the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered late. NAF reserves the right to prove that a higher damage has occurred. The Supplier reserves the right to prove that no damage has occurred at all or only significantly less.

## 4 Performance, delivery, transfer of risk, default of acceptance

- 4.1 The Supplier shall not be entitled to have the performance owed by it rendered by third parties (e.g. subcontractors) without NAF's prior written consent. The Supplier shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. limitation to stock).
- 4.2 For all deliveries to destinations within Germany, delivery will be made „free of charge“ to the place specified in the order, in accordance with the provisions of DDP INCOTERMS® 2020.  
If the place of destination is not specified and nothing else has been agreed, the delivery must be made to NAF's registered office in Neunkirchen am Brand, delivery zone. The respective place of destination is also the place of performance for the delivery and any subsequent performance.
- 4.3 The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the content of the delivery (article number and quantity) and NAF's order identification (date and number). If the delivery note is missing or incomplete, NAF shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content shall be sent to NAF separately from the delivery note.
- 4.4 The risk of accidental loss and accidental deterioration of the goods shall pass to NAF upon handover at the place of performance. If acceptance („Abnahme“) has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the regulations on contracts for work and services shall also apply accordingly in the event of acceptance. If NAF is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- 4.5 The statutory provisions shall apply to the occurrence of NAF's default of acceptance („Annahmeverzug“). However, the Supplier must also expressly offer its performance to NAF if a specific or determinable calendar time has been agreed for an action or cooperation by NAF (e.g. provision of material). If NAF is in default of acceptance, the Supplier may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 German Civil Code (BGB)). If the contract relates to a non-fungible item to be manufactured by the Supplier (one-off production), the Supplier shall only be entitled to further rights if NAF is obliged to cooperate and NAF is responsible for the failure to cooperate.

## 5 Prices and terms of payment

- 5.1 The price stated in the order shall be binding. Exceptions to this are all items listed in price lists jointly agreed between NAF and the Supplier. In these cases, the price from the price list valid at the time of delivery shall be binding. The same shall apply to flexible price components from payment systems jointly agreed between NAF and the Supplier. All prices shall be understood to include statutory value added tax if this is not shown separately.
- 5.2 Unless otherwise agreed, the price shall include all services/performances and ancillary services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transportation costs including any transport and liability insurance).
- 5.3 Unless otherwise agreed, the agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If NAF makes payment within 14 calendar days, the Supplier will apply a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been made on time if the transfer order is received by NAF's bank before the expiry of the payment period; NAF is not responsible for delays caused by the banks involved in the payment process.
- 5.4 NAF does not owe any interest on maturity („Fälligkeitssinsen“). In the event of late payment („Zahlungsverzug“), the statutory provisions shall apply.
- 5.5 NAF shall be entitled to rights of set-off („Aufrechnung“) and retention („Zurückbehaltung“) as well as the defence of non-performance of the contract to the extent permitted by law. In particular, NAF is entitled to withhold payments due as long as NAF is still entitled to claims against the Supplier arising from incomplete or defective services.
- 5.6 The Supplier shall only have a right of set-off or retention on the basis of legally binding or undisputed counterclaims.



# GENERAL TERMS AND CONDITIONS OF PURCHASE

of NAF Neunkirchener Achsenfabrik AG for use in business transactions with Suppliers - as of 01/2024



## 6 Confidentiality and Retention of Title

- 6.1 NAF reserves the right of ownership and copyright to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractually agreed service/performance of the Supplier and are to be returned to NAF after the contract has been completed. The documents must be kept secret from third parties, even after the contract has ended. The obligation of confidentiality only expires when and to the extent that the knowledge contained in the documents provided has become generally known. Special non-disclosure agreements and legal regulations on the protection of secrets remain unaffected.
- 6.2 The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items that NAF provides to the Supplier for production. Such items shall - as long as they are not processed - be stored separately at the Supplier's expense and insured to an appropriate extent against destruction and loss.
- 6.3 Any processing, mixing or combination (further processing) of items (secs. 947, 948, 950 of the German Civil Code (BGB)) provided by NAF to the Supplier shall be carried out for NAF. The same shall apply in the event of further processing of the delivered goods by NAF, so that NAF shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 6.4 The transfer of ownership of the goods to NAF shall be unconditional and without regard to the payment of the price. If, in individual cases, NAF accepts an offer of the Supplier to transfer ownership conditional on payment of the purchase price, the Supplier's reservation of title shall expire at the latest upon payment of the purchase price for the delivered goods. NAF shall remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price, assigning the resulting claim in advance (alternatively, the simple retention of title extended to the resale shall apply). This excludes all other forms of retention of title, in particular the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

## 7 Defective delivery

- 7.1 Unless otherwise stipulated in a quality assurance agreement, the statutory provisions and, exclusively in NAF's favor, the following supplements and clarifications shall apply to NAF's rights in the event of defects and defects of title („Sach-/Rechtsmängel“) in the goods (including incorrect and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Supplier.
- 7.2 In accordance with the statutory provisions, the Supplier shall be liable in particular for ensuring that the goods have the agreed quality upon transfer of risk to NAF. In any case, those product descriptions which - in particular by designation or reference in NAF's order - are the subject of the respective contract or have been included in the contract in the same way as these GPC shall be deemed to be an agreement on quality. It shall make no difference whether the product description originates from NAF, the Supplier or the manufacturer.
- 7.3 In the case of goods with digital elements or other digital content, the Supplier shall be responsible for providing and updating the digital content to the extent that this results from statutory provisions, a quality agreement pursuant to para. 2 or other product descriptions of the manufacturer or on its behalf, in particular on the Internet, in advertising or on the goods label.
- 7.4 NAF shall not be obliged to inspect the goods or make special inquiries about any defects upon conclusion of the contract. In partial deviation from Section 442 (1) sentence 2 German Civil Code (BGB), NAF shall therefore be entitled to claims for defects without restriction even if NAF was unaware of the defect at the time the contract was concluded due to gross negligence.
- 7.5 The statutory provisions (Sections 377, 381 German Commercial Code (HGB)) shall apply to the commercial duty to inspect and give notice of defects, with the following proviso: NAF's duty to inspect shall be limited to defects which become apparent during the incoming goods inspection by NAF by means of an external examination including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are recognizable during the quality control by NAF by means of random sampling. If acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. NAF's obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding the duty to inspect, the complaint (notification of defects) shall in any case be deemed to have been made without delay and in due time if it is sent within ten (10) working days of discovery or, in the case of obvious defects, of delivery.
- 7.6 Supplementary performance („Nacherfüllung“) shall also include the removal of the defective goods and reinstallation, provided that the goods were installed in another item or attached to another item in accordance with their nature and intended use before the defect became apparent; the statutory claim for reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses required

for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, shall be borne by the Supplier even if it turns out that there was actually no defect. NAF's liability for damages in the event of an unjustified request by NAF to remedy a defect shall remain unaffected; in this respect, however, NAF shall only be liable if NAF has recognized or grossly negligently failed to recognize that there was no defect.

- 7.7 Notwithstanding the statutory rights and the provisions in paragraph 6, the following shall apply: If the Supplier fails to meet its obligation to provide supplementary performance - at NAF's discretion by remedying the defect (rectification - „Nachbesserung“) or by delivering a defect-free item (replacement delivery - „Nachlieferung“) - within a reasonable period set by NAF, NAF may remedy the defect itself and demand compensation from the Supplier for the necessary expenses or a corresponding advance payment. If supplementary performance by the Supplier has failed or is unreasonable for NAF (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need to be set; the Supplier must be informed of such circumstances immediately, if possible in advance.
- 7.8 Otherwise, NAF shall be entitled to reduce the purchase price or withdraw from the contract in the event of a defect or defect of title in accordance with the statutory provisions. In addition, NAF shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

## 8 Supplier recourse

- 8.1 In addition to the claims for defects, NAF shall be entitled without restriction to NAF's statutory claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 445a, 445b and Sections 445c, 327 (5), 327u German Civil Code (BGB)). In particular, NAF shall be entitled to demand exactly the type of supplementary performance (rectification or replacement delivery) from the Supplier that NAF owes its customer in the individual case; in the case of goods with digital elements or other digital content, this shall also apply with regard to the provision of necessary updates. NAF's statutory right of choice (Section 439 (1) German Civil Code (BGB)) shall not be restricted by this.
- 8.2 Before NAF recognizes or fulfils a claim for defects asserted by its customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) German Civil Code (BGB)), NAF shall notify the Supplier and request a written statement, with a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by NAF shall be deemed to be owed to NAF's customer. In this case, the Supplier shall be responsible for providing evidence to the contrary.
- 8.3 NAF's claims arising from Supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by NAF, NAF's customer or a third party, e.g. by fitting, attachment or installation.

## 9 Producer's liability

- 9.1 If the Supplier is responsible for product damage, it shall indemnify and hold harmless NAF against third-party claims to the extent that the cause lies within its sphere of control and organization and it is itself liable in the external relationship.
- 9.2 Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Sections 683, 670 German Civil Code (BGB) arising from or in connection with claims asserted by third parties, including recall actions carried out by NAF. NAF shall inform the Supplier of the content and scope of recall measures - as far as possible and reasonable - and give the opportunity to comment. Further statutory claims shall remain unaffected.
- 9.3 The Supplier shall take out and maintain product liability insurance with a lump sum cover of at least two (2) million EUR per personal injury/property damage and provide evidence of this to NAF on request.

## 10 Limitation

- 10.1 The reciprocal claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- 10.2 Notwithstanding Section 438 Para. 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for third-party claims for restitution in rem (Section 438 (1) No. 1 German Civil Code (BGB)) shall remain unaffected; claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right against NAF - in particular in the absence of a statute of limitations.
- 10.3 The limitation periods under sales law, including the above extension, shall apply - to the extent permitted by law - to all contractual claims for defects. Insofar as NAF is also entitled to non-contractual claims for da-



# GENERAL TERMS AND CONDITIONS OF PURCHASE

of NAF Neunkirchener Achsenfabrik AG for use in business transactions  
with Suppliers - as of 01/2024



damages due to a defect, the regular statutory limitation period shall apply (Sections 195, 199 German Civil Code (BGB)), unless the application of the limitation periods of the sales law leads to a longer limitation period in individual cases.

## 11 Choice of applicable law and place of jurisdiction

- 11.1 These GPC and the contractual relationship between NAF and the Supplier shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules of German private international law.
- 11.2 If the Supplier is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), the exclusive - also international - place of jurisdiction for all disputes arising out of or in connection with the contractual relationship and on the occasion of its termination shall be the registered office of NAF in Neunkirchen am Brand. The above provision shall apply accordingly if the Supplier is not a merchant but does not have its general place of jurisdiction in Germany. However, NAF shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GPC or an overriding individual agreement or at the Supplier's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

\*\*\*

