



NIRECO

INTERNATIONAL GmbH

***General Terms and Conditions of
Sale & Delivery***





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1 Scope of application; deviating conditions

- 1.1** These General Terms and Conditions of Sale and Delivery (“**GTCs**”) shall apply to all contracts concerning the sale, work and materials, including ancillary agreements, concluded between NIRECO International GmbH („**NIRECO**“) and its customers (each a “**Buyer**”)
- 1.2** These GTCs shall apply, provided that the Buyer is an entrepreneur within the sense of Section 14 of the German Civil Code (BGB) upon conclusion of the contract. They shall also apply to transactions with legal persons under public law or special funds under public law. They shall not apply to transactions with consumers.
- 1.3** Any deviating conditions of the Buyer, which are not explicitly acknowledged by NIRECO, are not applicable. This shall also apply in cases where NIRECO makes its delivery without reservation, although it is aware of the Buyer’s objecting terms or terms deviating from these GTCs.
- 1.4** In ongoing business relationships, these GTCs shall also apply to all future transactions between NIRECO and the Buyer.
- 1.5** Individual agreements with the Buyer and deviating information in NIRECO’s offers shall in any case take precedence over these GTCs.

2 Conclusion of the contract

- 2.1** The offers of NIRECO, including the sales prices stated in NIRECO’s price lists, are subject to confirmation, unless they are expressly marked as binding.
- 2.2** The order of the goods by the Buyer shall be deemed a binding offer. Unless otherwise stated in the order, NIRECO is entitled to accept this offer within two weeks after its receipt by NIRECO.

3 Product documents; execution documents

- 3.1** Documents, illustrations, drawings, performance specifications as well as weight and dimensional data indicated in catalogues, product sheets and/or on NIRECO’s websites reflect only approximate values. They do not constitute information about the quality of the goods, unless designated explicitly as binding. NIRECO reserves the right to make improvements and changes to the extent customary in the trade and reasonable for the Buyer.

- 3.2** All illustrations, photographs, drawings and other documents accompanying NIRECO's offers and deliveries shall remain the property of NIRECO and shall be returned to NIRECO after termination of the contract, unless this is included in the scope of delivery of the purchased goods.
- 3.3** In all other cases, the illustrations, photographs, drawings and other documents may not be reproduced or made available to third parties in any form without the prior consent of NIRECO. Unless NIRECO has given its consent, the illustrations, drawings and other documents may only be made accessible to a third party with the simultaneous resale of the goods to the third party. The legal restrictions of the copyright are not affected by this regulation.
- 3.4** If the Buyer has to provide any documents, it shall be responsible for their completeness, correctness and for the timeliness of their provision.

4 Prices; terms of payment; exclusion of offsetting and retention

- 4.1** Sale and delivery are effected on the basis of the list prices valid on the date of contract conclusion. Unless agreed otherwise, the prices are net prices in Euro ex works, Deilbachtal 199, 45257 Essen („ex works“ Incoterms 2020), plus applicable VAT and other taxes and duties incurred for the execution of the purchase order.
- 4.2** If, after the conclusion of the contract, the circumstances relevant for the calculation of the prices, in particular the costs for material, wages, transport and public charges to be borne by NIRECO, change in a way that is neither foreseeable nor accountable to NIRECO, NIRECO is entitled to adjust the prices in the same proportion. If the aforementioned circumstances lead to a reduction of costs, NIRECO is obliged to reduce the prices in the same proportion vis-à-vis the Buyer. Cost increases or cost reductions will be proven to the Buyer upon request. In the event of a price increase of more than 5 % since conclusion of the contract, the Buyer has the right to withdraw from the contract.
- 4.3** Unless otherwise agreed by the parties, all invoices for deliveries (or other services) shall be paid within 30 days of the invoice date and without any deduction. As regards the timeliness of the payment, the date on which the amount is received by NIRECO shall be decisive.
- 4.4** If the Buyer is in default of payment, NIRECO may charge interest in accordance with the statutory provisions. The right to claim higher damages caused by delayed performance is reserved.
- 4.5** Cheques (Schecks) and bills of exchange (Wechsel) are accepted only after special agreement and only on account of performance, whereby any expenses and discounts are charged to the Buyer.

4.6 Irrespective of the term of any cheques and bills of exchange accepted on account of performance, NIRECO's claims become due and payable immediately if the Buyer has seriously breached any contractual agreements and is responsible for such a breach. In this case, NIRECO is entitled to execute or provide any outstanding deliveries or services only against advance payment or security.

4.7 4.7 The Buyer is only entitled to offsetting (Aufrechnung) against counterclaims if the counterclaims are undisputed, or have been finally and non-appealably established. The Buyer is only entitled to exercise a right of retention (Zurückbehaltungsrecht) if the counterclaims are undisputed or have been finally and non-appealably established and if they are based on the same contractual relationship.

5 Delivery, passing of risk; consequences of late delivery; force majeure; reservation of self-supply

5.1 Deliveries are effected ex works Deilbachtal 199, 45257 Essen („ex works“ Incoterms 2020). The place of performance for the delivery is also located there. At the request and cost of the Buyer, the goods will be sent to another place of destination (sales shipment). Unless agreed otherwise, NIRECO shall be entitled to determine the type of shipment itself (in particular, the transport company, shipping route, and packaging). The risk of incidental loss or incidental deterioration shall also pass to the Buyer upon dispatch, even if NIRECO has borne the shipping costs or other additional services or if a partial delivery is made.

5.2 Delivery periods and/or delivery dates promised by NIRECO are always approximate unless a fixed period or date has been promised or agreed. NIRECO's duty of delivery shall be suspended as long as NIRECO has not received the execution documents as well as all documents and information necessary or useful for the execution of the order, or as long as the Buyer is in default vis-à-vis NIRECO regarding any other liability. In this respect, NIRECO reserves the right to put forward the defence of non-performance of the contract.

5.3 If the Buyer is in default of acceptance or culpably violates other duties of cooperation, NIRECO shall be entitled to have compensated the damage incurred by NIRECO in this respect, including any additional expenses. NIRECO reserves any further claims or rights. The risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer as of the time when the Buyer is in default of acceptance or payment.

- 5.4** NIRECO is entitled to make partial deliveries as are customary in the trade if: the partial delivery is not precluded by contract, it can be used by the Buyer for the purpose stipulated in the contract, delivery of the remaining goods ordered is ensured and if the Buyer does not incur substantial extra expenditure or additional costs as a result (unless the seller agrees to pay for these costs). Complaints regarding partial deliveries do not release the Buyer from its obligation to accept the residual quantity of the goods ordered as stipulated in the contract.
- 5.5** In the event of force majeure or other events, which are unforeseeable upon conclusion of the contract and unavoidable in spite of reasonable care applied in accordance with the individual circumstances, such as war, natural disasters, plant disorders, legal strikes, lock-outs or governmental orders, the delivery periods/dates shall be extended by the duration of the impairment and a reasonable lead time. If such impairments lead to a delay in performance of more than three months, both parties may rescind the contract. If, due to the aforementioned circumstances, delivery becomes impossible or unreasonable, without NIRECO being responsible, NIRECO shall be entitled to rescind the contract in whole or in part with respect to the portion of the contract not yet fulfilled. In this case, the Buyer shall not be entitled to any damage claims against NIRECO. Any statutory rights of rescission shall not be affected thereby.
- 5.6** If the Buyer has to set a reasonable period of grace in order to exercise any rights vis-à-vis NIRECO, this period of grace shall be at least two weeks.
- 5.7** If NIRECO itself is not supplied although NIRECO has placed orders at reliable suppliers, NIRECO shall be released from its performance obligation and may withdraw from the contract. NIRECO is obligated to immediately inform the Buyer of the non-availability of the goods and will immediately reimburse any payment already made by the Buyer.

6 Defects; warranty rights (Gewährleistungsrechte); limitation period

- 6.1** Warranty rights are governed by statutory law, as modified by the following provisions of this clause 6. These GTCs do not provide any guarantees.
- 6.2** The Buyer is obliged to carefully inspect the goods delivered immediately after their arrival at the place of destination. The Buyer has to notify NIRECO of any apparent defects within seven working days from delivery, timely dispatch of the notice being sufficient for compliance with this deadline. Hidden defects must be notified to NIRECO immediately, but no later than within seven working days from their discovery. Each notice of complaint must be made in writing. If the Buyer was able to recognize the defect at an earlier time during normal use, this earlier time shall be decisive for the start of the notice period. If the Buyer fails to carry out the proper inspection and/or to report any defects, NIRECO's liability for unreported defects shall be excluded, unless NIRECO maliciously (arglistig) failed to disclose the defect.

- 6.3** At NIRECO's request, any defective goods are to be returned to NIRECO, carriage free. In the event of a justified notice of defects, NIRECO will reimburse the costs for the cheapest method of dispatch; this does not apply if the costs are increased because the delivered goods are located at a place other than the place of their intended use. If the notice of defects is unjustified, NIRECO is entitled to request reimbursement of the costs incurred hereby from the Buyer, except the Buyer is not responsible for the unjustified notice of defects.
- 6.4** In the event of a defect reported in time, the Buyer is, at NIRECO's discretion, entitled to rectification (Nachbesserung) or substitute delivery of non-defective goods (jointly referred to as "**Subsequent Performance**"). The Buyer must give NIRECO the time and opportunity necessary for Subsequent Performance, in particular hand over the defective goods for purposes of inspection. Subsequent Performance takes place at the place of original delivery; it is deemed to have failed, at the earliest, after two unsuccessful attempts. In the event of substitute delivery, the Buyer shall return the defective goods to NIRECO in accordance with the statutory provisions. The defective goods replaced become the property of NIRECO unless they are still the property of NIRECO anyway.
- 6.5** The expenses which are necessary for the purpose of Subsequent Performance, in particular, transport, travel, labour and material costs, shall be borne by NIRECO, provided that a defect actually exists. Otherwise, NIRECO shall be entitled to demand from the Buyer reimbursement of any costs incurred due to the unjustified request, unless the Buyer was unable to recognize that no defect existed. Subsequent Performance does not include the disassembly or the reassembly of the defective goods if NIRECO was originally not obliged to perform the assembly.
- 6.6** Notwithstanding any statutory provisions, no warranty rights (Gewährleistungsrechte) shall exist if any damage is the result of inappropriate treatment of the goods. Furthermore, the warranty is excluded in particular if the Buyer modifies the goods or has them modified by a third party without NIRECO's consent and if as a result elimination of defects is rendered impossible or unreasonably difficult. In any case, the Buyer shall bear all additional costs for the elimination of defects caused by the modification.
- 6.7** In the event of defects in components or products of other manufacturers, which NIRECO is unable to remedy for licensing or actual reasons, NIRECO shall, at its option, reimburse its warranty claims against the manufacturers and suppliers for account of the Buyer or assign it to the Buyer. Warranty claims against NIRECO for such defects shall only exist under the other conditions and in accordance with these GTCs if the judicial enforcement of the aforementioned claims against the manufacturer or supplier was unsuccessful or is futile, for example due to insolvency.
- 6.8** The Buyer is only entitled to claims for compensation for damages due to defects to the extent NIRECO's liability pursuant to clause 7 is not excluded or limited. Any additional claims or claims other than those governed by this clause 6 due to a defect are excluded.

- 6.9** Notwithstanding Section 438 (1) no. 3 BGB, the general limitation period for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed upon, the limitation period shall begin with the acceptance. However, if the goods relate to a building or an item that is used for a building in accordance with its normal method of use and has caused this building to be defective (building materials), the limitation period is five years from delivery in accordance with statutory provisions (Section 438 (1) no. 2 BGB). Any other special statutory provisions regarding the statute of limitations (in particular, Section 438 (1) no. 1 and (3), Section 445b BGB) shall also not be affected. The aforementioned limitation periods of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Buyer which are due to a defect in the goods, unless the application of the regular legal statute of limitations pursuant to Sections 195, 199 BGB would lead to a shorter limitation period in the individual case. The Buyer's damage claims due to intent or gross negligence and/or injury to life, limb or health as well as under the German Product Liability Act shall become time-barred exclusively in line with statutory periods of limitation.

7 Liability

- 7.1** NIRECO shall only be liable for gross negligence (grobe Fahrlässigkeit) and intent (Vorsatz) as well as for a breach of duties the performance of which is a prerequisite for the proper execution of the contract and on the compliance of which the Buyer is regularly entitled to rely on ("**Essential Obligations**").
- 7.2** In respect of a slightly negligent breach of an Essential Obligation, NIRECO's liability is limited to the typical damage foreseeable upon conclusion of the contract.
- 7.3** NIRECO is not liable for a slightly negligent breach of contractual duties that are not Essential Obligations.
- 7.4** Insofar as NIRECO's liability is limited or excluded, this also applies to the liability of NIRECO's employees, representatives or vicarious agents.
- 7.5** The aforementioned limitations or exclusions of liability do not apply if NIRECO has maliciously (arglistig) failed to disclose a defect, has assumed a guarantee or a procurement risk, is liable on the basis of the German Product Liability Act, and in the event of bodily injury (injury of life, limb and health). This does not lead to a change in the burden of proof to the detriment of the Buyer.

8 Reservation of title

- 8.1** The following reservation of title serves to secure all existing current and future claims of NIRECO against the Buyer resulting from the ongoing business relationship between NIRECO and the Buyer, including all balance claims from current accounts (hereinafter referred to as "**Secured Claims**").
- 8.2** All goods supplied by NIRECO remain the property of NIRECO until the full payment of all Secured Claims. The goods supplied and any goods that replace these and are subject to the reservation of title pursuant to the provisions below are hereinafter referred to as "**Reserved Goods**".
- 8.3** If the Buyer processes, combines or mixes the Reserved Goods with goods of another origin to new items or a mixed stock, NIRECO is entitled to co-ownership in the proportion of the value of the Reserved Goods (final invoice amount including VAT) at the time of supply to the value of the other goods processed, combined or mixed (final invoice amount including VAT) at the time of processing, combining or mixing. The co-ownership share is deemed to be Reserved Goods within the sense of clause 8.2. In the event that no such acquisition of ownership occurs for NIRECO, the Buyer hereby now transfers as a security its future ownership or – in the aforementioned proportion – its co-ownership in the new item or mixed stock created to NIRECO. NIRECO hereby accepts this transfer.
- 8.4** If the Reserved Goods are combined or inseparably mixed with other items to a uniform item and if any of the other items can be regarded as the main item within the sense of Section 947 BGB, the Buyer, if it is the owner of the main item, hereby now transfers to NIRECO the proportionate co-ownership in the uniform item in the proportion of the value of the Reserved Goods (final invoice amount including VAT) at the time of supply to the value of the main item (final invoice amount including VAT). NIRECO hereby now accepts this transfer. The co-ownership share is regarded as Reserved Goods within the sense of clause 8.2.
- 8.5** The Buyer shall retain the Reserved Goods on behalf of NIRECO at no cost. The Reserved Goods may neither be pledged nor assigned as collateral to third parties before payment in full of the Secured Claims.
- 8.6** The Buyer is obliged to handle the Reserved Goods with care. In particular, he is obliged to insure the Reserved Goods sufficiently at his own expense against fire, water and theft damage at reinstatement value. If maintenance and inspection work is necessary for the proper care of the Reserved Goods, the Buyer must perform such work in due time at his own expense. However, this shall only apply insofar as the costs thereby incurred are within the scope of the customary.

- 8.7** The Buyer shall refer immediately to NIRECO's ownership in the event of pledging, seizure or other dispositions or interventions by third parties regarding the Reserved Goods and to notify NIRECO thereof in writing in order to enable NIRECO to exercise its ownership rights, in particular to bring legal action pursuant to Section 771 of the German Code of Civil Procedure (ZPO). The Buyer shall bear all judicial or extra-judicial costs that are necessary to eliminate the intervention and to recover the Reserved Goods, provided that these costs cannot be collected from the third parties.
- 8.8** The Buyer is entitled to sell the Reserved Goods supplied in the ordinary course of business if it is ensured that its claims from the resale pursuant to clauses 8.9 to and including 8.11 have been transferred to NIRECO.
- 8.9** If the Reserved Goods are resold, the Buyer herewith now assigns to NIRECO the resulting claim against the Buyer on account of security as well as the claims that replace the Reserved Goods or that accrue in respect of the Reserved Goods, such as insurance claims or claims resulting from unlawful acts in the event of loss or destruction, including all balance claims under current accounts. NIRECO hereby now accepts this assignment.
- 8.10** If the Buyer sells the Reserved Goods together with other goods not supplied by NIRECO, the assignment of the claim from the resale shall only apply to the amount of the value of the Reserved Goods (final invoice amount including VAT) at the time of delivery. In the case of the sale of goods in which NIRECO has co-ownership in accordance with Section 8.3 or 8.4, the assignment of the claim shall apply in the amount of this co-ownership share. The Buyer also assigns to NIRECO to the same extent the claims (including the right to grant a security mortgage) that arise against third parties as a result of the connection of the goods purchased with a land plot. If the Buyer himself is the owner of the land, the advance assignment shall include to the same extent the claims resulting from the sale of the land or of land rights.
- 8.11** The Buyer is revocably authorized to collect the claims resulting from a resale pursuant to the above provisions of this clause 8. NIRECO may revoke the authorization to collection only in accordance with clause 8.12.

8.12 If the Buyer fails to meet its obligations under the contract with NIRECO, in particular if it is in default of payment:

- NIRECO may prohibit the resale and combining of the Reserved Goods with other goods;
- NIRECO may rescind the contract in accordance with the general regulations concerning rescission of Section 323 BGB; the taking back of the goods does not constitute rescission of the contract, except that NIRECO has expressly declared such rescission; in the event of rescission, the Buyer's right of possession of the Reserved Goods lapses and NIRECO may demand return of the Reserved Goods; in coordination with the Buyer, NIRECO shall be entitled to enter the Buyer's business premises and take possession of the Reserved Goods at the Buyer's cost and to sell them in the open market or by auction on the most favourable terms without prejudice to any payment and other obligations of the Buyer; NIRECO will offset the sales proceeds against the Buyer's liabilities after deduction of the costs; any surplus will be paid by NIRECO to the Buyer;
- the Buyer has to inform NIRECO on request of the names of the debtors of the claims assigned to NIRECO in order to enable NIRECO to disclose the assignment and to collect the claims; all proceeds attributable to NIRECO under the assignments are to be forwarded to NIRECO immediately after receipt, when and as soon as NIRECO's claims against the Buyer have become due and payable;
- NIRECO shall be entitled to revoke the collection authorization granted.

8.13 Should the realisable value of the securities existing in favour of NIRECO exceed NIRECO's claims by more than 10 %, NIRECO will, at the Buyer's request, release the securities selected by NIRECO.

8.14 If NIRECO's reservation of title is no longer valid due to deliveries abroad or for any other reasons, the Buyer shall immediately grant NIRECO any other security in the Reserved Goods or other security for its claims, which is valid under applicable laws and comes as close as possible to the securing effect of the reservation of title. The Buyer authorizes NIRECO, to the extent necessary for the effectiveness of the relevant security (including reservation of title), to enter the security in the required form in public registers, books, or similar documents and/or to disclose it in compliance with applicable regulations, or to do this itself, if necessary. If any costs are incurred from or in connection with the circumstances or actions mentioned in this clause 8.14, these shall be borne by the Buyer.

9 Duties of cooperation and contribution of the Buyer

- 9.1** The Buyer must fully inform NIRECO of all facts relevant to the performance of deliveries and/or services within a reasonable period of time. NIRECO is not obliged to check data, information or other services provided by the Buyer for completeness and correctness to the extent that there is no reason to do so under consideration of the respective circumstances of the individual case or the obligation to check was not expressly accepted as a contractual obligation.
- 9.2** Insofar as work is carried out at the Buyer's premises, NIRECO's employees are to be provided with the necessary workplaces (including heating, electricity, water, etc.), the necessary equipment and heavy tools (e.g. lifting gear, compressors) as well as the required items and materials (e.g. scaffolding timber, wedges, documents, lubricants, fuels) free of charge. In particular, the Buyer must also make the material available necessary for adjustment and testing purposes regarding machines or systems supplied by NIRECO. The Buyer must secure the materials and tools supplied by NIRECO against harmful influences.
- 9.3** The Buyer accepts as an Essential Obligation that all cooperation and contribution services agreed upon or resulting from the nature of the object are provided in the required quality and on the agreed dates without additional costs for NIRECO. To the extent necessary, the Buyer shall make his own personnel available for this purpose.

10 Software

- 10.1** NIRECO grants the Buyer a non-exclusive license to use any software and/or firmware contained in or in the scope of delivery of the Goods ("**Software**") and the related documentation in connection with the Buyer's use of the Goods. The source code for the Software shall not be made available to the Buyer and the Buyer may not modify, disassemble, decompile, reverse engineer or create derivative works of the Software. The Buyer may not reproduce the Software or pass it on to third parties and may only transfer it in connection with a transfer of the goods and subject to these restrictions. Certain parts of the Software may be owned by third parties and licensed to NIRECO. NIRECO reserves the right to perform a software update to correct any errors and for stability purposes after properly notifying the Buyer. New software features will be charged separately after consultation.

11 Assembly and service performances

If and to the extent that NIRECO undertakes assembly or service performances (repairs, maintenance), the special assembly and service terms of NIRECO will apply. It is agreed that these GTCs shall apply additionally to such performances in any case.

12 Applicable law and place of jurisdiction

- 12.1** The contractual relationship between NIRECO and the Buyer, including these GTCs, shall be subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.2** The place of jurisdiction for all disputes arising from and/or in connection with the contractual relationship, including these GTCs, – and for lawsuits involving cheques and bills of exchange – shall be the registered seat of NIRECO, if the Buyer is a business person (Kaufmann) as defined by the German Commercial Code (HGB), a legal person under public law or a special fund under public law. In all cases, however, NIRECO shall be entitled to bring an action at the place of performance of the delivery obligation or at the Buyer's general place of jurisdiction. Any overriding statutory provisions, in particular, regarding exclusive places of jurisdiction, shall not be affected.

13 Final Provisions

- 13.1** Changes or supplements to the contract, including this written form provision, must be made in writing to become effective. The same applies to any ancillary and additional arrangements.
- 13.2** If these GTCs are provided to the Buyer in various language versions, the German version shall be authoritative.
- 13.3** If a provision of the contract, including these GTCs, is or becomes invalid in whole or in part, the validity of the remaining provisions of the contract shall not be affected by the invalidity of said provision. The invalid provision is to be replaced by a provision that comes closest to the economic purpose of the invalid provision, without being invalid.