

General Terms and Conditions

1. Area of Validity

These General Terms and Conditions of Trade apply to contracts with N3, in particular to orders concerning repairs, tests, test procedures or component repair orders. They shall apply exclusively to contracts with companies, public law corporations, or special funds under public law in the sense of § 310 paragraph 1 BGB (German Civil Code). Hereafter, these shall be referred to as Client. Contrary or divergent conditions of the purchaser shall only be recognised if N3 has explicitly acknowledged the validity thereof in writing.

2. Tenders and Conclusion of Contracts

Tenders submitted by N3 are subject to confirmation and may be revoked at any time by N3 until such a written confirmation has been received.

Should an order differ from the tender submitted by N3, then a contract will only come into being if N3 issues a written confirmation. Silence is not a substitution for such written consent. Inasmuch as an order is to be regarded as a tender in the sense of § 145 BGB, N3 may accept it within a period of two weeks.

3. N3 Documents

N3 reserves ownership and copyrights to all documents handed over to a Client in connection with the awarding of a contract, such as costings, drawings etc. Access to these documents may not be granted to third parties, unless N3 gives the Client its express written permission to do so. If a contract should not come into being, then these documents are to be returned to N3 without delay.

4. Deliveries and Passing of Risk

If the Client should deliver components to N3 that are part of the order with N3, then delivery notes must be attached to the packaging in a clearly visible position. These must quote the order number, the article description and part number, the quantities delivered and any other certificates or documents also being supplied. They must also contain a reference to any partial deliveries. Deliveries that belong together are to be identified as such. Goods that do not have their origin in a country that is a member of the European Community are to be identified as such. In the event of any violation of any other above obligations, N3 shall be entitled to refuse acceptance of the delivery, unless the error is not the fault of the Client.

If parts, goods, etc. are delivered to the Client at his express wish, then the Client must inform N3 of any regulations that are to be observed in connection with the transport in good time and in writing. This also applies to cases in which any particular rules and regulations are to be observed in connection with the transportation or storage of goods within N3's premises.

At the time of the dispatch of the goods to the Client, at the latest when they leave the plant, the risk of accidental loss or accidental deterioration passes to the Client. N3 will dispatch the goods ex works Arnstadt, in accordance with Incoterms 2000. This also applies to cases in which N3 bears the freight costs.

5. Prices and payment conditions

Prices apply ex works plus the statutory rate of VAT at the rate valid at the time. The costs of the delivery, in particular packaging, dispatching, transport insurance and customs/ customs clearance costs are to be borne by the Client.

Early payment discount may only be deducted if a separate written agreement has been concluded in this regard.

Payment is to be made within 14 days after the order has been fulfilled in full and the invoice received by the Client.

N3 is entitled to demand progress payments for partial deliveries that are complete in themselves according to the status of the performance.

6. Offsetting and Rights of Retention

The Client shall only possess the right of offsetting any claims of his own if his counter claims have been legally established or are undisputed. The Client shall only be entitled to exercise a right of retention inasmuch as his counter claim results from the same contractual relationship.

7. Delivery period

The beginning of the delivery period quoted by N3 presupposes the punctual and orderly fulfilment of his duties on the part of the Client. Should the Client be in default of acceptance or should he wilfully violate any of his other duties to cooperate, then N3 is entitled to demand compensation for any damages incurred, including any extra expenditure. All further reaching rights remain reserved. Should the above-mentioned prerequisites apply, the risk of accidental loss or accidental deterioration of the object of the contract shall pass to the client at that point in time when he falls into acceptance or debtor's default.

8. Acceptance and Warranty

Inasmuch as this is desired by one of the contractual parties a formal final inspection is to be carried out at N3's plant.

If no final inspection is carried out and the goods are delivered to the Client, then the Client is obliged to inspect the goods immediately after receipt for completeness, possible deficiencies and full functionality and to advise N3 in writing of any incomplete or deficient performance delivery. The Client's warranty rights depend on his having complied with these inspection and complaint obligations in a due and proper fashion.

Claims based upon defects are forfeited 12 months after final inspection or, if no such inspection has taken place, after the delivery of the goods supplied by N3 to the Client.

If, notwithstanding all due care and attention, a fault should be found with N3's performance that already existed at the time of the passing of risk, then N3, subject to a claim having been registered within the period allowed, is obliged to rectify the situation. The Client must always offer N3 the opportunity to rectify the situation within a reasonable period of time.

Should two attempts to rectify the situation fail, the Client may without adversely affecting any claims to compensation he might have either withdraw from the contract or reduce the remuneration he pays.

Claims based on defects do not exist in cases of merely negligible deviations from the agreed characteristics, merely negligible impairment of the goods' usefulness, natural wear and tear or damages caused after the passing of risk by incorrect or negligent treatment, excessive strain being placed thereupon, unsuitable operating materials or any extraordinary influences that were not foreseen according to the contract. If the Client or any third party should undertake any improper maintenance work or make any improper amendments, then claims for defects cannot be derived from these actions and their consequences either.

Claims on the part of the Client regarding necessary expenditure for rectification purposes, in particular for transport, routing, labour and material costs, are excluded, inasmuch as these expenses are increased owing to the goods being delivered by N3 in the course of such rectification are sent to a place other than the Client's office, unless this transport accords with the purpose for which they are intended.

In cases of fraudulent concealment of defects or assumption of guarantee for the characteristics of the goods, further going claims are unaffected.

9. Liability

Inasmuch as N3 is required, according to statutory stipulations, to make good damages that were caused by slight negligence, then N3's liability is limited, in as much as the damages incurred were not to life, limb or health. Liability exists only in connection with the violation of essential contractual obligations and is restricted to typical cases of damages foreseeable at the time the contract was concluded. Independent of any culpability on the part of N3, any liability on the part of N3 resulting from fraudulent concealment of a defect, the assumption of a guarantee or a procurement risk remains unaffected.

If N3 should be unable to adhere to the deadline for fulfilment as a result of force majeure or disruptions to operations that are no fault of its own, no obligation to pay damages caused as a result shall be incurred. If the delay is the fault of an agent of N3, in particular a sub-supplier, then claims for compensation shall be limited to the value of the performance in question. N3 is obliged to inform the Client of the delay, inasmuch as this is possible. Should the deadline for fulfilment be extended to a degree that is unreasonable for the Client, then he can withdraw from the contract. N3 can in such a case only issue invoices for performances already fulfilled.

10. Miscellaneous

This contract and all legal relationships between the parties are subject to the laws of the Federal Republic of Germany.

Place of fulfilment and exclusive court of jurisdiction for all disputes arising from these General Terms and Conditions of Trade is the business domicile of N3, unless the order confirmation should state otherwise.

All agreements arrived at between the parties for the purpose of implementing this contract have been set down in writing in these General Terms and Conditions of Trade.