

## **General terms and conditions of Getriebebau NORD GmbH & Co. KG**

### **Article 1 Scope**

- (1) The following terms and conditions form the sole basis for all legal relationships entered into between ourselves and our customers.
- (2) Customers in the meaning of these terms and conditions are exclusively companies in the meaning of article 14 BGB, legal entities under public law or public special funds.
- (3) The general terms and conditions apply in the version applicable at the date of conclusion of the contract. They can be accessed in a storable and printable format from "[www.nord.com](http://www.nord.com)" free of charge.
- (4) Different general terms and conditions of the customer only apply with our explicit written approval.

### **Article 2 Conclusion of contract**

- (1) The order by the customer is a binding offer. At our discretion we may accept this offer by sending the customer a confirmation of the order within 30 days or by delivering the ordered goods to the customer within the same period.
- (2) Our offers are subject to change. This also applies to the configuration of our products on our internet portal. For the conclusion of the contract at our discretion, clause (1) above applies accordingly.
- (3) When a contract is concluded, related documents, such as illustrations, drawings, details of weights and dimensions and the details in our publications are only definitive insofar they are explicitly stated as binding. Without our explicit and binding consent, descriptions of characteristics, for example in the context of preliminary negotiations, brochures or advertisements and information found on the internet portal do not constitute a warranty as to characteristics or durability.
- (4) We reserve the right to make modifications to the technical data and design of our products in the interest of technical progress.

## Article 3 Prices and payment terms

- (1) Our prices are valid ex works exclusive of packaging and plus the applicable VAT.
- (2) The price is due for payment without deduction within 30 days of invoicing unless any other written agreement has been concluded. After expiry of the payment period the customer will be in default.
- (3) For contracts with an agreed term of delivery of more than 4 months we reserve the right to increase prices according to any increases in costs incurred due to collectively agreed wages or increases in the price of materials. If the increase is more than 5 % of the agreed price, the customer is entitled to revoke the contract.
- (4) If prior to sending our order confirmation we become aware of the customer having insufficient assets for fulfilling the contract, we reserve the right to delivery against collection (immediate payment on delivery) or advance payment (immediate payment prior to delivery). Cheques are only considered as payment once fully cleared, and we reserve the right to refuse them.
- (5) In case of late payment or other lack of creditworthiness of the customer becoming apparent after sending our order confirmation, all claims which already exist against the customer become due with immediate effect. In this case we reserve the right to offset incoming payments against the oldest claim in accordance with article 367 BGB, first against its costs and interest, then the main claim. We are also entitled to perform any still outstanding deliveries and services, also in variation to any already sent order confirmation, against advance payment only or to revoke the contract after a reasonable grace period. The customer is, however, entitled to avert these consequences by way of a security deposit.
- (6) The customer only has offsetting rights for claims which are undisputed by us or legally established against us. Furthermore, the customer is only entitled to exercise an offsetting right inasmuch as his counter claim is based on the same contractual relationship.

## Article 4 Delivery, transfer of risk

- (1) We are entitled to partial deliveries to a reasonable extent.
- (2) Our deliveries are ex works.

(3) The goods are dispatched at the risk (loss, deterioration, delay) of the customer. This also applies if we have agreed to delivery free of freight charges in exceptional cases. If the dispatch is delayed for reasons beyond our control, the risk is transferred at the date of notification of readiness to dispatch. This does not affect the statutory risk transfer due to delayed acceptance.

(4) At the explicit written request of the customer, and at his expense, we shall insure the goods to be delivered against transport risks of all kinds.

(5) Packaging will be invoiced at cost. Other agreements require our explicit written confirmation. If the Packaging Regulations requires that we are to take back the transport packaging, the customer shall pay the costs for the return transport of the packaging used.

(6) Our delivery dates are not binding unless they have been explicitly confirmed as binding in the order confirmation. If we cannot comply with a delivery date for reasons beyond our control (e.g. force majeure, official intervention, unforeseen events, such as strike, lock-out, lack of supply by our suppliers etc.), we shall inform the customer without delay and specify a reasonable new delivery date according to the given circumstances. The customer may demand delivery 6 weeks after a non-binding delivery date has been exceeded, stating a reasonable extension. After expiry of the extension we are in delivery default. We are not responsible for the circumstances mentioned in sentence 2, even if they occur during an extension stated by the customer or an already existing delay.

(7) If the customer is entitled to damages for default, in case of minor negligence on our part, these shall be limited to 0.5 % for every completed week of delay but to a maximum of 5 % of the price (exclusive of VAT) for the part of the delivery and/or service subject to delay. Furthermore, the customer is entitled to cancel the contract after expiry of the stated extension. In case of cancellation, any counter performances already provided by the customer will be reimbursed. The customer may not claim compensation in lieu of performance for minor negligence on our behalf.

(8) Changes in design or form and other deviations or modifications of the scope of delivery during the delivery period are reserved insofar as the modifications or deviations are reasonable for the customer, taking our interests into account.

## **Article 5 Duties of cooperation and acceptance**

I. In the context of purchase contracts which have been concluded

Goods which are ready for dispatch must be accepted by the customer. If he does not comply with this obligation, we are entitled to set a grace period of 2 weeks. After expiry of this period we may, at our discretion, cancel the contract and claim compensation. The compensation for lost profits amounts to 15 % of the purchase price. It may be assessed as higher or lower if we demonstrate a greater lost profit or the customer demonstrates that the lost profit is less or no profit would have occurred. In addition, the costs for dismantling and storage may be claimed as further compensation items in the case of serial parts. For special manufacture the manufacturing and scrapping costs must be reimbursed.

II. In the context of contracts for work which have been concluded

(1) The subject of a contract for work is the performance of a specified service (e.g. in the context of a repair contract).

At our discretion, we shall decide which employees shall be deployed and reserve the right to change employees at any time. We may also utilise sub-contractors for the performance of the service.

(2) Insofar as the service is to be performed at the customer's premises, the customer shall create the necessary conditions so that we have access to the subject of the service and shall assist us in the provision of the service. In particular, for the duration of performance of the service, the customers shall provide appropriately qualified personnel for the clarification of technical and organisational questions.

(3) As soon as we have completed the service/partial service which is to be provided, we shall present the result of the service to the customer for acceptance/partial acceptance. The customer must fully examine the result of the service within a period of seven calendar days and shall inform us in writing of the acceptance/partial acceptance or shall inform us in writing of any faults which have been found. The result of the service shall be deemed to be accepted/partially accepted if there is no statement to the contrary by the customer within this acceptance period. Faults which only impair the use of the result of the service to a minor extent do not constitute grounds for refusal of acceptance/partial acceptance. If the customer submits a written list of faults to us within the required period, we shall remedy the faults which are justifiably stated in the list and shall present the result of the service for re-acceptance/partial re-acceptance. If a contract for work has several independently usable works as its subject, these individual works shall be accepted separately and independently of each other.

## **Article 6 Retention of ownership**

- (1) All goods supplied by us remain our property until settlement of all of our claims on whatever legal grounds. In the case of continuous invoicing, the reserved goods shall serve as security against our claims for the balance.
  
- (2) As long as the customer is not in arrears of payment with us or some other significant deterioration of his asset situation or creditworthiness occurs, he may sell the goods owned by us in the course of normal business under the usual conditions. As a security for all our claims from the business relation, the customer already now assigns all claims to the level of the final invoice amount (including VAT) to us which are due to him from his customers or third parties on account of reselling, irrespective of whether the goods were resold without or after preprocessing. We accept this assignment. The customer remains entitled to collect these claims even after their assignment. Our entitlement to collect claims directly remains unaffected, however, we commit not to collect the claims as long as the customer is not in payment arrears or some other significant deterioration of his asset situation or credit worthiness occurs. In these cases we may demand that the customer notifies us of the assigned claims and their debtors, provides all details necessary for collection, hands over the corresponding documentation and informs the debtors (third parties) about the assignment.
  
- (3) Where the customer processes or alters goods delivered by us, he always does so on our behalf, without any obligation on our part. If the goods are processed together with other items not belonging to us, we acquire a co-ownership of the new article in relation to the value of our goods to the other processed items at the time of processing. For the remainder, the same applies to the article created by processing as for reserved goods.
  
- (4) If the goods are inseparably joined or mixed with other items not belonging to us, we acquire a co-ownership of the new article in relation to the value of our goods to the other joined or mixed items at the time of joining or mixing. If joining or mixing takes place in such a way that the customer's article becomes the main item, it is agreed that the customer assigns to us joint ownership proportionally. The client will hold the sole or joint ownership items in safe custody for us.
  
- (5) To secure our claims, the customer also assigns to us claims which he obtains against a third party through the linking of our goods to a real estate property.
  
- (6) The customer is prohibited from pledges, transfers by way of security or other dispositions.
  
- (7) In case of the customer breaching the contract, in particular in case of late payment, the issuance

of an arrest warrant for filing a statutory declaration, when filing a statutory declaration of assets, or in case of an application for the commencement of insolvency proceedings concerning his assets, we are entitled after a reasonable period to repossess our goods which are still with the customer without the need for a declaration of withdrawal. To this end the customer already grants us permission to enter his premises at the usual hours and take possession of the goods.

(8) The customer must notify us in writing of third party access to the reserved goods without delay after discovery. The customer is liable for all costs arising for the elimination of such access, in particular by filing a third party objection, unless the costs can be reimbursed from the third party concerned.

(9) At our discretion, on request by the customer we commit to release the securities due to us, if their value exceeds the claims to be secured by more than 20 %.

## **Article 7 Warranty**

I. In the context of purchase contracts which have been concluded

(1) With regard to the type, scope and characteristics of the goods, the information provided in the order confirmation is definitive. Any other public statements by us are irrelevant with regard to the agreed characteristics of the goods.

(2) Warranty claims by the customer are conditional on him having observed his statutory obligations of examination and complaint. The customer must give us the necessary time and opportunity to investigate the complained defect and in particular submit the goods for this purpose.

(3) For defects accepted by us we shall, at our discretion, provide subsequent fulfilment through rectification of the defect (reworking) or the delivery of an article free from defects (replacement delivery). Our statutory right to refusal remains unaffected.

(4) If a total of 3 attempts at reworking or subsequent deliveries are fruitless, the customer may withdraw from the contract or demand a reduction of the purchase price. The obligation of complaint according to Clause 2 remains in effect in the case of failure of the subsequent fulfilment.

(5) For the parts installed for the purpose of defect rectification the customer may have warranty claims based on the purchase agreement up to the expiry of the warranty period for the goods.

Performance of measures under warranty does not constitute the start of a new warranty period.

(6) Ownership of replaced parts passes to us.

(7) Warranty claims according to the Clause 7 I for defective goods are subject to a period of limitation of one year after delivery. This reduction of the period of limitation does not apply to the following claims according to Clause 8 (1). In this case, the statutory warranty period of two years applies.

(8) Warranty claims are excluded if the defect is due to one of the following causes: unsuitable or improper use; excessive use; faulty assembly or commissioning; natural wear; operation under conditions differing from those specified in the order confirmation; improper handling; unsuitable operating materials; replacement materials; use of oils and/or greases not approved by us; mechanical, chemical, physical, electromechanical, electrochemical and/or electrical influences; third party intervention. Warranty claims are further excluded if the customer carries out or commissions reworking, modifications or repairs without granting us the prior opportunity for reworking or without obtaining our written consent.

(9) Transportation and packaging costs for the goods complained of and reworked or replacement deliveries shall be borne by the customer.

## II. In the context of contracts for work which have been concluded

(1) With regard to the type, scope and characteristics of the services to be performed, the statements in the order confirmation are definitive. Any other public statements by us are irrelevant with regard to the result of the service.

(2) The customer shall inform us in writing in an understandable manner of any faults which occur and shall provide us with the necessary information for the remedy of the fault.

(3) For defects accepted by us we shall, at our discretion, provide subsequent fulfilment through rectification of the defect (reworking) or the delivery of an article free from defects (replacement delivery). Our statutory right of refusal remains unaffected.

(4) If a total of 3 attempts at reworking or subsequent deliveries are fruitless, the customer may withdraw from the contract or demand a reduction of payment, or may remedy the defect himself and demand compensation for the necessary expenditure. The obligation of notification as per Clause II (2) remains

in effect in the case of failure of subsequent fulfilment.

(5) For the parts installed for the purpose of remedy of defects the customer may have warranty claims based on the contract for work up to the expiry of the warranty period for the work. Performance of services under warranty does not constitute the start of a new warranty period.

(6) Ownership of replaced parts passes to us.

(7) Warranty claims according to the Clause 7 II for services are subject to a period of limitation of one year after delivery. This reduction of the period of limitation does not apply to the following claims according to Clause 8 (1). In this case, the statutory warranty period of two years applies.

(8) Warranty claims are excluded if the defect is due to one of the following causes: unsuitable or improper use: excessive use; faulty assembly or commissioning; natural wear; operation under conditions differing from those specified in the order confirmation; improper handling; unsuitable operating materials; replacement materials; use of oils and/or greases not approved by us; mechanical, chemical, physical, electromechanical, electrochemical and/or electrical influences; third party intervention. Warranty claims are further excluded if the customer carries out or commissions reworking, modifications or repairs without granting us the prior opportunity for reworking or without obtaining our written consent.

(9) Transportation and packaging costs for the goods complained of and reworked or replacement deliveries shall be borne by the customer.

## **Article 8 Liability**

(1) We are only liable for damages - irrespective of the legal basis - in case of wilful intent and gross negligence. However, we are also liable for minor negligence for damages arising from

- death, personal injury or health impairment;
- the violation of a major contractual obligation; in this case our liability is, however, limited to the replacement of any foreseeable typically arising damage.

The above liability limitations do not apply if we have fraudulently hidden a defect or accepted a warranty.

The same applies to claims by the purchaser in accordance with the Product Liability Act.

(2) Where our liability is excluded or limited, this also applies to the liability of our legal representatives, employees and agents.

(3) We shall not be liable for the functionality of data networks, servers or data lines to our computer centre or the continuous availability of our internet portal.

## **Article 9 Copyright**

We reserve all property rights and copyright to illustrations, drawings, samples and other documents. The customer is merely entitled to their contractual use. Any further use or utilisation, in particular disclosure to third parties, requires our prior written consent.

## **Article 10 Data protection**

(1) The personal data provided voluntarily by the customer during the preparation of his offer will be used exclusively in compliance with the provisions of the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG).

(2) Personal data of the customer are only collected if and insofar as the customer voluntarily provides such data during the use of the internet portal. Processing and disclosure to third parties only take place inasmuch as this is necessary for the execution of the contractual relationship between us and the customer. Therefore, the data are forwarded to the haulage company commissioned with delivery and - if applicable - to the credit institute commissioned for payment processing. There will be no additional disclosure of the data to third parties.

(3) The customer has the right to information about his stored personal data free of charge at any time as well as a right to the correction, blocking and deletion of these data.

(4) For the purpose of advertising, market research or the appropriate design of our offers we reserve the right to create user profiles using pseudonyms from the collected customer data. The customer has the right at any time to object to the utilisation of his user data.

(5) The content of the data protection information ("data protection declaration") with in the meaning of Clause 10 is available to the customer at any time at "www.nord.com".

## **Article 11 General provisions, place of jurisdiction, applicable law**

(1) The above provisions constitute a complete representation of the agreements which have been made. There are no ancillary agreements. Alterations and amendments must be in writing. This also applies to the alteration of this clause requiring the written form.

(2) If individual provisions are or become invalid or ineffective, the effectiveness of the remaining provisions remains unaffected. The excluded or ineffective provisions of this contract will be replaced by the statutory provisions (article 206 paragraph 2 BGB). Where such statutory provisions are not available in a specific case (gap of provisions) or would lead to an unacceptable result, both parties will negotiate to replace the excluded or ineffective provision with an effective provision coming closest to it commercially. Both parties commit to submit any necessary declarations of intent which are necessary for this.

(3) The place of fulfilment for all contractual obligations is Bargteheide.

(4) The place of jurisdiction for merchants, legal entities under public law or public special funds is Hamburg. Where a legal dispute comes under the jurisdiction of municipal courts, the jurisdiction of the municipal court Hamburg-Mitte is agreed.

(5) The applicable law is that of the Federal Republic of Germany with the exclusion of any international and supranational (contractual) legal systems, in particular the UN Sales Law.

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