

1. Definitions

“our”, “we”, “us” means NOA;
“Order” means purchase order or contract and any amendment thereto including these Conditions, duly signed on behalf of the NOA GmbH; “Supplier” means the supplier named in the Order.

2. General

All our current and future Orders shall be governed exclusively by these conditions of purchase. Any amendment of these conditions shall be invalid save as confirmed by us in writing. Contrary business conditions of the supplier are hereby expressly excluded. Such conditions shall never be accepted even if we omit expressly to oppose at any time. The Supplier shall recognize the exclusive validity of our conditions of purchase upon accepting the order as soon as it is received by it but in any case at the latest upon first performing the Order, even if any document it uses refers to its own conditions. Neither the acceptance of goods or services nor payment for same shall constitute approval of the supplier's business conditions.

3. Purchase orders

3.1 The Supplier's offer(s) shall be binding and made without cost to us. Orders shall be valid only if done in writing or confirmed by us in writing. Oral and telephone arrangements shall be invalid save as confirmed by us in writing.
3.2 Every Order is to be confirmed accepted by the Supplier without undue delay, and the binding delivery date shall be stated at the same time.
3.3 The delivery or performance of ordered goods or services by third parties, either wholly or in part, shall be subject to our written consent.
3.4 The agreed prices shall be final and include all ancillary costs including but not limited to freight, customs, insurance and shall cover all costs of delivery either to us or at our request to our customer.

4. Obligation to notify and duty of care

4.1 If we have disclosed to the Supplier the purpose for which the goods or services will be used, or if such purpose should be evident to the Supplier even without our express disclosure, the Supplier shall be obliged to notify us without undue delay if the goods or services are unsuitable for such purpose.
4.2 We are to be notified without undue delay in writing of circumstances jeopardizing compliance with agreed delivery dates, so that the next steps can be clarified.
4.3 The Supplier must notify us without undue delay in writing of changes in the type of composition of the processed material or in the design, compared with similar goods or services delivered or performed previously. Such changes shall be subject to our written consent prior to delivery or performance.

5. Compliance with statutory requirements

5.1 The Supplier shall guarantee and warrant that the goods and services comply with the all current technical standards, relevant legal provisions, directives and regulations of public authorities, employer's liability insurance associations and trade associations, and all statutory requirements applicable in Austria and the European Union, and shall upon each delivery notify us of specific, not generally known by us treatment and waste disposal requirements.
5.2 The Supplier shall warrant compliance with the restriction of the use of certain hazardous substances in electrical and electronic equipment, known as RoHS compliance. In other words, no goods or services shall contain more than 0.1 weight percent of lead, mercury, hexavalent chromium, polybrominated biphenyls (PBBs) or polybrominated diphenyl ethers (PBDEs) per homogeneous substance or more than 0.01 weight percent of cadmium per homogeneous substance.

6. Delivery date, delivery and place of performance

6.1 The agreed delivery date shall be binding on the Supplier. In particular, deliveries shall not be made conditional on the timely availability of supplies to the Supplier. Compliance with the delivery date for goods and services shall be governed by the time of their arrival or readiness for collection and acceptance at the place of receipt indicated by us.
6.2 The place of performance for goods and/or services of the Supplier shall be the place of receipt indicated in the Order.
6.3 In the event of non-compliance with the delivery date, at our absolute discretion we may grant the Supplier a reasonable period of grace to fulfill the delivery. If the Supplier does not deliver within such period of grace, we shall be entitled either to rescind the contract or to demand compensation for nonperformance. As a general rule, our claim to payment of an agreed contractual penalty shall remain unaffected hereby. If we demand compensation for non-performance, the agreed contractual penalty shall count towards such compensation.
6.4 If we no longer have an interest in the goods or services because of noncompliance with an agreed delivery date or period in the case of a transaction for delivery by a fixed date, the contract can be rescinded without the granting of a period of grace.
6.5 If the supplier is unable to comply with a delivery date because of force majeure, it must notify us without undue delay upon becoming aware of the force majeure event. In such an event, we shall be entitled either to defer the acceptance period, or, if our interest in the delivery is materially diminished, to rescind the contract wholly or in part and/or to demand compensation if applicable. The Supplier shall be unable to derive any claims whatsoever from such an occurrence. In particular, the Supplier shall not be entitled, in the event of force majeure or similar, at his discretion to rescind the contract or impose price increases.
6.6 All deliveries shall be accepted only on working days from Mondays to Fridays during the period from 9 am until 4 pm. Deliveries arriving outside of these hours cannot be accepted. Goods on pallets must be delivered by elevating platform vehicle or scissor lift because a loading bay is not available.

7. Shipment, transfer of risk

7.1 Purchased items are to be packed, labeled and shipped properly. Generally industry accepted packaging and shipping regulations are to be observed. Only approved, environment-friendly packaging materials are to be used. Non-approved packaging materials shall be disposed of or returned at the supplier's expense.
7.2 For each consignment, on the day of delivery we shall be provided with a shipping note indicating our purchase order number, the exact quantity, description, the unit and gross weight, and the dimensions of the items.
7.3 Shipping documents, delivery notes and packing slips are to accompany the deliveries. All documents must satisfy the identification requirements stated in clause 6.2 and indicate our Order details. Additional costs incurred by us because of non-compliance with these provisions shall be charged to the Supplier.
7.4 Part-deliveries are allowed only as agreed in writing by us; otherwise, we shall be entitled to refuse acceptance. In any event, part-deliveries shall not be treated as separate transactions and must be labeled accordingly.
7.5 In the case of deliveries excluding installation or assembly, the risk shall pass upon arrival of the goods at the place of receipt indicated by us. In the case of deliveries including installation or assembly, and in the case of services, the risk shall pass upon acceptance, which shall take place at the place of installation or receipt.
7.6 We shall not bear the cost of insuring the goods by way of a forwarder's insurance policy.
7.7 The cost of insurance through a transport insurance policy shall likewise not be accepted.

8. Billing, payment and no offsetting

8.1 Duplicate invoices shall be presented to us after the delivery has been made. Where applicable monthly invoices are likewise to be sent in duplicate by the third day of the month following delivery of the goods or services. Invoices can be processed only if they indicate our Order number and are issued to the correct billing entity.
8.2 Payment shall generally be made by us by bank transfer within 14 days, subject to a 3 % discount, or alternatively within 30 days net without discount. This payment period shall start upon receipt of the invoice by us, but in no event before the goods are received or the service is accepted if such receipt or acceptance takes place after receipt of the invoice. The discount can also be applied in the event of offsetting or retention because of a defect.
8.3 The Supplier is not entitled to assign his claims against us without our written consent, or to have same collected by a third party.
8.4 Settlement of the invoice shall not constitute a waiver of claims for defects in respect of the delivered goods or services and shall not rule out subsequent complaints in respect of defects.

9. Warranties

9.1 In addition to the statutory warranty, the Supplier shall warrant the use of the best materials for the purpose, correct and proper workmanship, assembly which is free from defects and is fit for purpose, and the correct and proper implementation in respect of power consumption, performance and efficiency. It shall expressly warrant the unconditional compliance of the delivered goods and/or services with the samples, specimens and end-user, but no later than 24 months after acceptance by us. If the Supplier grants longer warranty periods or such longer periods are agreed by an individual contract, these alternative periods shall apply.

9.3 The Supplier shall be liable for the goods, specimens, brands etc. delivered by it as being free from third-party rights of all kinds and not infringing the intellectual property rights of third parties, in particular patents or copyright. The Supplier shall further exempt us from product liability claims.

It shall further be liable for the delivered goods complying with all statutory provisions and official requirements. If any provisions of private or public law are infringed, the Supplier shall exempt us from all third-party claims. At our request the Supplier shall furnish us with evidence of its product liability insurance which shall confirm that an adequate sum is insured.

9.4 If a claim is made against us by public authorities or competitors because of an infringement by the Supplier or its suppliers of the obligations set forth under 4.1 to 4.4, the Supplier shall exempt us from the costs arising as a consequence. In particular, if prohibited substances are contained in a delivery, a ban according to the provisions of Point5 could be imposed on us placing a product or products on the market. In such an event, the Supplier shall make good all losses, including loss of profits, arising from such a ban.

9.5 In the event of litigation, the Supplier shall at its own expense provide legal assistance upon request and exempt us from all costs of our legal representation, including court costs. In addition, the Supplier shall make good all losses arising from reliance on the unrestricted usability of the purchased items or services which are incurred by us and/or our customers.

The Supplier shall make good the loss of our customer only if the customer asserts a relevant claim against us or if the customer is entitled to assert such a claim.

9.6 If goods are delivered incorrectly or if goods and/or services are defective, we shall be entitled to demand a price reduction, or replacement delivery or performance, or removal of the defect free of charge, and to exercise the right of rescission. If we exercise said right, the goods and/or services shall be returned to the Supplier at its expense and risk. We shall further be entitled to assert compensation claims for non-performance to the extent permissible by law. We can also, at the Supplier's expense, remove the defect ourselves or have such defect removed in case of urgency. We shall be entitled to consider that the repair or replacement delivery or service has failed if the first attempt to remove the defect does not succeed.

9.7 The Supplier shall also be liable for all consequential harm caused by defects, irrespective of both the amount and the ratio of its value to the Order value.

9.8 In the event of discrepancies concerning the quantity, dimensions or weight of the delivered goods, the values established by our incoming goods control shall prevail.

9.9 The running of the statutory limitation period shall be interrupted by a complaint in respect of defects.

9.10 A complaint in respect of defects shall be deemed timely if made without undue delay upon discovery of the defect – but shall be no later than within 18 months of the delivery.

10. Provided items and documents

10.1 All documents, specimens, models and drawings placed at the disposal of the Supplier by us in connection with an Order or inquiry shall remain our property. It shall keep these in safe custody and treat carefully, shall not give third parties access to them, and shall not use them for third-party purposes.

10.2 Said items are to be used exclusively to produce an offer or the purchased goods and/or services.

10.3 The Supplier shall be obliged to perform at its own expense any necessary maintenance and inspection work and to adequately insure us furnished items provided in clause 9.1, and to furnish us with evidence of such insurance on request.

11. Transfer of ownership and liability

11.1 Ownership of ordered goods shall pass to us upon notification of readiness for shipment. The Supplier shall hold the ordered goods in custody for us free of charge until transfer. Said held goods shall be segregated from other stocks held by the Supplier. The Supplier shall continue to take the risk of fire, theft or other loss, destruction or deterioration of the goods, until the risk is transferred, and the Supplier shall insure against these risks.

11.2 For every statutory and contractual basis for liability (in particular in case of default, contractual violation, impossibility, incapacity, the infringement of obligations during contractual negotiations, or tort), we shall be liable only if the loss is caused wilfully or through gross negligence. Even in these cases, the liability shall be restricted to the amount foreseeable by us.

11.3 The Supplier is responsible in full and unlimited for personal damages. The liability for personal damages cannot be excluded in any form from the Supplier.

12. Confidentiality and data protection

12.1 The Supplier undertakes to keep confidential all not publicly known commercial and technical details of which it becomes aware through the business relationship with us. Any sub-suppliers are to be similarly obliged.

12.2 The Supplier shall be allowed to cite our company name or trademarks when providing references or in publications only with our prior written consent.

13. Spare parts

13.1 The Supplier shall be obliged to deliver spare parts on reasonable conditions for the period of customary technical use, but for at least 10 years after the most recent delivery. Excluded from this obligation are IT components and systems, for which a time limit of 3 years shall apply (from system acceptance). For PCs, IT equipment and similar devices, the Supplier undertakes to issue a device ID card and to include same with each delivery, so that we shall have an additional means of procuring spare parts.

13.2 If the Supplier ceases delivery of the purchased item(s) upon expiry of or during the period stated in clause 12.1, the person ordering shall be given the opportunity to issue a final Order.

13.3 The Supplier shall warrant compliance with the provisions of point 5 governing prohibited substances, for spare parts as well. In other words, no goods or services shall contain more than 0.1 weight percent of lead, mercury, hexavalent chromium, polybrominated biphenyls (PBBs) or polybrominated diphenyl ethers (PBDEs) per homogeneous substance or more than 0.01 weight percent of cadmium per homogeneous substance.

14. Contractual penalties

14.1 If the contract or Order value exceeds € 5,000, we shall be entitled, for each breach of contract by the Supplier, to the exclusion of the principle that multiple acts shall be deemed a unified act if the legal elements of each offence is similar, without prejudice to other individually agreed contractual penalties, to payment by the Supplier of a contractual penalty in the amount of 5 % of the contract or Order value, irrespective of further claims.

15. Corruption

15.1 The Supplier and we have the consensus intention to oppose any form of corruption.

15.2 The Supplier shall at all times comply with all applicable laws, rules and sanctions in relation to anti-corruption. This includes the British Anti-Corruption-Act (UK Bribery Act 2010) but is expressly not limited to this.

15.3 The Supplier already has in place or intends to devise, implement and enforce written policies and procedures according to the anti-corruption laws in its company to prevent a violation to anti-corruption laws mentioned in paragraph 15.2.

15.4 The Supplier shall ensure that its third party agents, contractors or other persons who are performing services or providing goods on behalf the Supplier in connection with this agreement does so only on the basis of a written contract and in compliance with the conditions mentioned in paragraph 15.1 and 15.2.

15.5 Breach of paragraph 15.1 and 15.2 is considered as a substantial breach of this agreement between the Supplier and us and can lead to the cancellation of the contract or immediate termination of the contract by us.

15.6 Any breach of paragraph 15.1 and 15.2 entitles us to demand a penalty of up to 10% of the total purchase value. In case of malicious intent or gross negligence the Suppliers' liability is unlimited in any case. Somebody is acting negligently if he fails to exercise reasonable care. The Supplier is responsible for the fault of his legal

representative and any other agent arranged by the Supplier to fulfill his contractual obligations, in the same extent as if it is his own fault. In case of existence of a serialized connection between the contraventions, the penalty is due only once.

15.7 We furthermore reserve the right to make further claims for damages, and performance; further claims for warranty and limitations periods shall remain unaffected as well.

15.8 The Supplier shall indemnify us from any damages caused by an indebted violation to paragraph 15.1 and 15.2.

16. Venue and applicable law

15.1 The seat of our company shall be the exclusive venue. This shall apply even if the Supplier does not have a general venue in Austria at the time judicial proceedings are initiated. We shall further be entitled to seek redress in any legally competent court.

15.2 The law of the Austrian republic shall apply. The UN Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply. The Incoterms shall apply as revised from to time.

17. Closing provisions

16.1 Our conditions and the contract shall remain valid to the full extent even if individual provisions are legally invalid in other respects. Instead of an invalid provision, the valid provision corresponding closest to the economic content of the invalid provision shall be deemed agreed.

16.2 If a provision of the present business conditions or of the contract is invalid giving consideration to mandatory foreign law, the Supplier shall on request agree supplements to the contract and make declarations to third parties or public authorities, so that the provision concerned and thus its economic content remain valid even according to the foreign law.