

Standard terms and conditions of sale of NIVONA Apparate GmbH

1. Territorial scope of the terms and conditions

- 1.1. Goods shall be supplied, services shall be provided and quotes shall be made by NIVONA Apparate GmbH ("NIVONA") to undertakings as defined by sec. 14, 310 of the German Civil Code (BGB), public sector corporations and public law entities with special public funds (the customer) subject exclusively to these terms and conditions and to the agreements made in individual cases by way of a supplement thereto. The said terms and conditions shall apply equally to all future goods supplied, services provided and quotes made to customers, even if they are not once again separately agreed.
- 1.2. Customers' standard terms and conditions of purchase that differ from these terms and conditions shall not apply, even if NIVONA has not in individual cases separately objected to their validity. Even if NIVONA refers to a communication containing the customer's or a third party's terms and conditions, or referring to the same, this may not be construed as denoting consent to their validity.

2. Quotation and contract conclusion

- 2.1. Unless they are expressly designated as being binding or unless a specific deadline for acceptance has been set, quotes from NIVONA shall be without obligation.
- 2.2. The customer's purchase order is a binding offer. NIVONA is entitled to accept this offer within 2 weeks of its being made. Once the order has been confirmed in writing, the invoice has been issued or the goods ordered have been delivered, acceptance has become binding on the customer.
- 2.3. As far as concerns the legal relationship between NIVONA and the customer, the contract concluded in writing, which includes these standard terms and conditions of sale, shall alone prevail. This reproduces in full all agreements reached between the parties. Verbal undertakings made by NIVONA prior to the conclusion of the contract shall not be legally binding and unless they in each case expressly point to the fact that they are to continue to apply as binding agreements, verbal agreements between the parties to the contract shall be replaced by the written contract.
- 2.4. To be valid, supplements and amendments to the agreements made, including these terms and conditions of sale, must be in writing. With the exception of directors or fully authorised officers, NIVONA's staff are not authorised to reach verbal agreements that differ from these terms and conditions.

3. Delivery and transfer of risk

- 3.1. The risk shall be transferred to the customer as soon as the goods that have been handed over to the person undertaking the transport have left NIVONA's warehouse with a view to shipment or, in case of collection by the customer, as soon as NIVONA has notified the fact that the goods are ready for collection. This shall apply even if NIVONA is meeting the shipping costs.

If the shipment or handover is delayed owing to a circumstance for which the customer is responsible, the risk shall be transferred to the customer as of the date on which the products are ready for shipment and NIVONA has notified the customer of this.

- 3.2. The terms of delivery cited by NIVONA shall be binding only if they were expressly promised or agreed as a fixed term. NIVONA's delivery obligation shall in any event be subject to customers making their own arrangements for the due and timely collection of goods.

- 3.3. The terms of delivery shall be considered to have been met if NIVONA has handed over the products to the person undertaking the transport by the deadline or if the products are ready by the deadline for the customer to collect.

- 3.4. Partial deliveries shall be permitted if

- the partial delivery can be used by the customer in the context of the intended purpose of the contract,
- the delivery of the rest of the ordered goods is assured and
- this does not cause the customer to incur any substantial additional expense or costs (unless NIVONA states that it is willing to meet these costs).

- 3.5. NIVONA shall not be liable for impossibility of supply or for delivery delays if these were caused by force majeure or other events, not foreseeable at the time of conclusion of the contract (e.g. any kind of breakdown or interruption, difficulties in materials or energy procurement, transport delays, strikes, lawful lockouts, shortage of manpower, energy or raw materials, difficulties in the procurement of required official permits, administrative measures or non-delivery, incorrect delivery or late delivery by suppliers), that are beyond the control of NIVONA.

Where such events make it considerably more difficult or impossible for NIVONA to supply the goods or provide the services, and the impediment is not merely temporary in duration, NIVONA shall be authorised to withdraw from the contract. For hindrances that are temporary in duration, the terms and/or deadlines for delivery or performance shall be extended and/or

deferred by the period of the impediment plus a reasonable period of time allowed for start-up.

If in consequence of the delay it is not reasonable to expect customers to accept delivery or performance, they may withdraw from the contract by giving NIVONA immediate written notice of this.

- 3.6. Irrespective of what is provided for above, default on the part of NIVONA presupposes the issue of a reminder by the customer and the expiry of an appropriate final deadline.
- 3.7. If NIVONA defaults, then provided they have not defaulted on acceptance and can substantiate the fact that this has caused them to suffer loss or damage, customers may claim default damages, for each full week of the default, of 0.5% of the value of the goods delivered late, with a maximum of 5%; claims for damages shall in all other respects be excluded. This shall not apply if in case of intent, gross negligence or on account of bodily injury or injury to health, liability has necessarily been incurred. Customers may withdraw from the contract under the heading of statutory provisions only if NIVONA is responsible for the late delivery. This provision is not tied to a change in the onus of proof to customers' detriment.
- 3.8. NIVONA ensures compliance with the requirement to accept returns, as set out in the Packaging Act, through its participation in region-wide waste disposal systems.

4. Prices

- 4.1. The prices are understood to be in Euro ex works NIVONA incl. packaging, in addition to the respectively applicable statutory VAT.
- 4.2. If the agreed prices are based on NIVONA's list prices and the goods are only due to be supplied more than four months after conclusion of the contract, the list prices of NIVONA that are valid at the time of delivery shall apply (unless in each case any discount that might have been agreed).

5. Terms of payment

- 5.1. Payments must be made ex NIVONA's accounts office in accordance with the agreed terms of payment, within the payment deadlines shown on the invoice and upon expiry of the same.

If there is no such agreement, then invoices shall be payable within 14 days with a 3% discount and/or 30 days net as of the invoice date. Generally, no discount is offered on c.o.d. shipments. Replacement parts must be paid for immediately net cash. Where ex display appliances are sold prior to expiry of the agreed

payment deadline, the purchase price shall be payable immediately. Agreed payment deadlines shall be considered to have been met if NIVONA is able to dispose of the amounts due within such deadlines. Payments may be used, at NIVONA's option, to settle customers' earlier unpaid debts, unless the customer cites reasonable grounds for some other terms of repayment.

- 5.2. If it is agreed that payment may be made by cheque or bill of exchange, then the payment is in principle made with a view to performance. NIVONA must be reimbursed without delay with costs and interest.
- 5.3. The purchaser may only offset claims against the seller if the purchaser's claims have been established lawfully or on an undisputed basis, or if it concerns counterclaims arising from the same contractual relationship. The purchaser shall have no right of retention against the seller unless the purchaser's claim is undisputed or has been lawfully established or concerns a counterclaim arising from the same contractual relationship.
- 5.4. If customers exceed the agreed payment deadlines, then NIVONA shall be authorised to charge statutory interest on arrears (currently 9% above the base lending rate) plus a flat-rate amount of € 40. The flat-rate amount must be taken into account for the purposes of any compensation owed for damages, if the costs of bringing action are cited as the reasons for the damages suffered.
- 5.5. If customers fail to meet payment obligations, if cheques or bills of exchange are dishonoured or if customers suspend payments or file for bankruptcy, all amounts invoiced that are still outstanding shall, irrespective of any provision to the contrary relating to their due date, become immediately payable. This shall equally apply should a customer's financial situation substantially deteriorate in any other way after conclusion of the contract. In the event of such circumstances, NIVONA shall moreover be authorised only to supply goods or provide services that are still outstanding against payment in advance or against the provision of collateral.
- 5.6. Claims for rebates, especially those based on agreed terms and conditions for onward carriage or customers' other claims for reimbursement, shall fall due only after the conditions for the same have been met and all the basic requirements for calculating such claims are in place.

6. Retention of title

- 6.1. Products shall remain the property of NIVONA up until such time as all claims that NIVONA currently has or might in future have against the customer, on whatever legal basis, have been satisfied ("goods subject to retention of title"), even if individual goods have been paid for. Goods subject to retention of title may be neither pledged nor assigned as collateral.
- 6.2. Customers shall be authorised to resell goods subject to retention of title in the ordinary course of business only. In the event of the transfer of goods subject to retention of title, customers shall assign in advance, by way of collateral, any future claims to which they might be entitled as the result of the resale to NIVONA, who shall accept this assignment, without the need for specific explanations to be given at a later stage. The assignment shall equally encompass claims for payment of account balances that have accrued as part of existing current account relationships or upon termination of such relationships between customers and their buyers. If the goods subject to retention of title are, together with other items, sold, rented out or become a built-in fixture of any property, then the customer shall assign to NIVONA that part of the claim to the full price that corresponds to the amount invoiced by NIVONA for the goods subject to retention of title.
- 6.3. Customers are authorised, up until revocation, to collect assigned claims arising from resale on their own behalf and for their own account; they are not however entitled to dispose of such claims in any other manner, e.g. through assignment. Notwithstanding NIVONA's right of revocation, the collection authority will become invalid if any claim that NIVONA has against a customer is not satisfied once it has fallen due. At NIVONA's request, customers must make the buyers concerned aware of the assignment of claims and furnish NIVONA with the documents required, e.g. invoices, and the information necessary to permit the latter to assert its rights against buyers. Customers shall meet the costs of collection and of any intervention.
- 6.4. Where payments are made by cheque/bill of exchange, title shall only be transferred once the cheque/bill of exchange has been cashed in full.
- 6.5. In case of garnishments, attachments or other third party dispositions or interventions, customers must notify NIVONA of this without delay.
- 6.6. If the value of collateral exceeds the claims that NIVONA has against customers as the result of their current business dealings by more than 20%, then NIVONA shall be obliged, at the customer's request, to release collateral, at its option, to the extent that such excess collateral exists.

- 6.7. In case of customers' default, NIVONA shall be authorised on expiry of a reasonable deadline that it set the customer for performance without such performance being forthcoming, to withdraw from the contract and take back the goods subject to retention of title. This shall not affect the statutory provisions stipulating the fact that it is unnecessary to set a deadline. Customers are obliged to return goods. If NIVONA has withdrawn from the contract, NIVONA shall be authorised to enter the premises on which the goods subject to retention of title are being stored with a view to their return, and to demand the assignment of any claims for restitution that customers might have against third parties.

7. Warranty

- 7.1. Claims for material defects that customers might have against NIVONA shall become statute-barred twenty-four (24) months after delivery of the products to customers. The above provisions shall not apply if the law provides for longer periods, as in sec. 438 BGB (construction goods), 445b BGB (right of recourse) and 634a BGB (construction defects). This shall not affect the statutory provisions governing the suspension and re-commencement of the limitation period.
- 7.2. What is owed is the supply of goods of average kind and quality, whereby the standard set is the standards of NIVONA and the average kind and quality of its goods. Information provided and agreements reached in relation to the nature of the goods do not represent any warranty, unless this is expressly agreed.
- 7.3. Should the goods supplied or service provided prove to be defective, then NIVONA shall at its option assume responsibility for this under its warranty - notwithstanding customers' rights of recourse pursuant to sec. 478, 445a and 445b BGB - through supplementary performance (rectification or replacement) at no charge. Warranty claims for a supplementary performance, for a reduction in the purchase price or for withdrawal or damages which go beyond this shall be ruled out unless there has been no supplementary performance despite a reasonable final deadline being set, unless the supplementary performance has failed twice or was absolutely refused by NIVONA, or if it is unreasonable to expect the customer to accept such supplementary performance. Any claims for damages shall be governed by section 8 of these provisions.
- 7.4. No liability shall be assumed for natural wear and tear or damages caused, following transfer of the risk, by mishandling or careless handling, improper structural alterations or repairs, excessive stress, unsuitable capital equipment or due to particular outside influences.
- 7.5. NIVONA shall meet the costs of shipping, transport, manpower and materials required for the supplementary performance. If,

following delivery, the goods delivered are transferred to a location other than the customer's place of business and this leads to an increase in the expenses, then unless the transfer is commensurate with the intended use, the customer shall meet the excess costs.

- 7.6 Delivered goods must be carefully examined without delay following delivery to customers or to third parties designated by the latter. In terms of apparent defects or other defects that would have been identified had a careful examination been performed without delay, goods shall be considered to have been accepted by customers if NIVONA does not receive a notice of defect in writing within fourteen (14) working days of delivery. Customers must notify NIVONA in writing of other defects immediately after they have become identifiable, and within fourteen (14) working days at the latest.
- 7.7 Where NIVONA satisfies consumers' warranty claims directly, customers shall have no rights of recourse against NIVONA. Customers shall moreover only have rights of recourse against NIVONA insofar as they have not reached agreements with or made voluntary concessions to consumers that go beyond the scope of legal claims. Customers' claims pursuant to sec. 445a BGB, which must be substantiated, shall irrespective of this be limited to the amount which, taking cost-effectiveness into account, was required for a successful supplementary performance. Customers shall bear the burden of proving the need for higher costs to be incurred. To substantiate their rights of recourse, customers must attach a copy of the proof of purchase, a proof of performance signed by the consumer, with a full description of the original replacement part replaced and/or of a replacement part authorised by the manufacturer, and the calculation of the costs incurred on shipping, transport, manpower and other material costs. Instead of accounting for this individually as set out above, NIVONA may also at its option satisfy customers' statutory rights of recourse pursuant to sec. 445a BGB through payment of a suitable flat-rate amount. NIVONA reserves the right to offset this against claims for damages to which it might be entitled as the result of work performed by customers as part of any supplementary performance where such work is not performed in a technically correct manner.
- 7.8 For defects of title, the above provisions shall apply accordingly.
- 7.9 The provisions set out above shall not affect the provisions of the Product Liability Act (ProdHaftG).

8. Liability and compensation for damages

Unless different liability provisions were made elsewhere in these terms and conditions, NIVONA shall only be obliged to provide compensation as follows for any loss or damage suffered by customers

directly or indirectly as the result of default on the part of NIVONA, defective delivery, or due to any other causes in law attributable to NIVONA.

- 8.1. There is in principle an obligation to provide compensation only if NIVONA is to blame for the loss or damage caused by it or if it bears responsibility for a breach of obligations. There shall be no liability for fortuitous or force majeure events.
- 8.2. There shall be no liability for loss or damage caused as the result of not using the goods as intended.
- 8.3. Claims for compensation on account of damages other than injury to life, limb or health shall be permitted (irrespective of subsection 8.4.) only if the seller may be charged with a grossly negligent or intentional breach of its obligations.
- 8.4. In case of any breach of a material contractual obligation, the seller shall moreover also be liable for ordinary negligence. The primary obligation, or any other obligation for which the proper performance of the contract is only rendered possible as the result of the fulfilment of the same and on compliance with which the customer ordinarily relies and may rely or the breach of which puts at risk the achievement of the contractual purpose, is a material contractual obligation, and notably the obligation to ensure the timely delivery of goods and to ensure that they are free of defects of title and of such material defects as might impair their functionality or fitness for purpose to more than a merely negligible extent. In such cases, compensation shall only be provided for loss or damage that is typical in contracts or is reasonably foreseeable, but not for loss or damage that does not usually arise or is remote, and notably no loss of profits or other financial losses suffered by customers. This shall apply even if a limit of liability was agreed.
- 8.5. If claims are made against customers based on strict liability in tort under law governing liability towards third parties which may not be varied by mutual agreement between parties, NIVONA shall enter into the rights and obligations of the customer to the extent that it would itself have been directly liable. The principles of sec. 254 BGB shall apply accordingly to the claims settlement between the customer and NIVONA. This shall equally apply even if the claim is made directly against NIVONA.
- 8.6. Claims from customers shall be excluded insofar as the loss or damage is attributable to breaches of obligations attributable to customers. NIVONA shall assume liability for measures taken by customers to prevent loss or damage, where it is legally obliged to do so.
- 8.7. Should they wish to make a claim against NIVONA based on the provisions as set out above, customers will act without delay and fully inform and consult with NIVONA. They must provide NIVONA with the opportunity to investigate the loss or damage. The contractual parties shall consult with one another on the measures to be taken, in particular with a view to settlement negotiations

with third parties.

- 8.8. In any decision on the amount of compensation for loss or damage, appropriate consideration should be given, acting in good faith, to NIVONA's economic realities, to the nature, scope and duration of the business connection and to the value that the goods supplied represent to NIVONA.
- 8.9. The liability of legal representatives of and servants and assistants of NIVONA shall be limited in the same way as NIVONA's liability based on the provisions as set out above.
- 8.10. The provisions as set out above are not tied to a change in the onus of proof to customers' detriment. Nor shall this affect NIVONA's liability under law which may not be varied by mutual agreement between parties, and notably under the Products Liability Act.

9. Place of jurisdiction, place of performance and applicable law

- 9.1. The place of jurisdiction for all disputes arising under the contractual relationship shall be Nuremberg, provided customers are traders, public sector corporations or public law entities with special public funds, or if they have no place of general jurisdiction in the Federal Republic of Germany. NIVONA is, however, also entitled to refer the matter to the court that has jurisdiction in the place in which the customer is based. This ruling shall not affect mandatory statutory provisions governing exclusive places of jurisdiction.
- 9.2. The place of performance and payment shall be Nuremberg.
- 9.3. The contractual relations shall be governed by the substantive law of the Federal Republic of Germany, with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and of provisions for referral under International Private Law.
- 9.4. If the contract or these standard terms and conditions of sale have gaps in their provisions, to fill these gaps, those legally valid provisions shall apply which the contractual parties would have agreed upon, had they been aware of the gaps in provisions, based on the economic objectives set by the contract and on the purpose of these General Terms and Conditions of Sale.