

## Standard Ordering Terms and Conditions for – Business Abroad of NOBLEX GmbH based in Eisfeld

### 1. General

- 1.1 Unless otherwise provided for in writing, the legal relationship between the supplier and us shall be based exclusively on the present Standard Ordering Terms and Conditions. Conflicting terms and conditions of sale shall not apply, even if we do not expressly object in a given case. More specifically, the acceptance of deliveries or services and payments shall not signify agreement.
- 1.2 Our orders, as well as any changes and additions thereto shall be made in writing.
- 1.3 Our Ordering Terms and Conditions shall only apply to suppliers within the meaning of Section 14 of the German Civil Code (BGB) if the contract forms part of the business operation, as well as to legal persons under public law and to separate estates under public law within the meaning of BGB Section 310 (1).
- 1.4 Our Ordering Terms and Conditions shall also apply to any future business with the supplier.

### 2. Conclusion of Contract

- 2.1 A contract shall not be deemed concluded until we have issued a written statement of acceptance within 14 days of receipt of an offer.
- 2.2 If the supplier has not confirmed our orders unchanged within 14 days of receipt (confirmation of order), we shall be entitled to cancel such orders free of charge.
- 2.3 Should the confirmation of order deviate from the order, we shall only be bound to it if we have agreed to such deviation in writing within 14 days. Specifically, we shall be bound to the supplier's general terms and conditions only in so far as they are compatible with our Ordering Terms and Conditions or as we have agreed to those terms and conditions in writing.

### 3. Purchase Price

- 3.1 Prices shall be fixed prices. Unless otherwise agreed upon, all the supplier's prices shall be free place of delivery named by us in the order, including packaging and freight, as well as any import charges that may be incurred. The DDP provisions as defined in Incoterms 2000 shall apply.
- 3.2 In the event of prices quoted ex supplier's works or ex supplier's warehouse, delivery shall be effected at the lowest costs possible, unless we have stipulated a specific manner of shipment. Any supplementary costs resulting from failure to comply with a given shipping instruction shall be borne by the supplier. In the event of free domicile prices, we shall equally have the right to determine the mode of transportation. Any additional expenses incurred for expedited shipment that may be required to meet the delivery date shall be borne by the supplier.

### 4. Invoices and Payments

- 4.1 Invoices shall be submitted to us in duplicate. Invoices shall show order IDs and the number of each individual item. In addition, invoices shall comply with applicable tax regulations, notably those pertaining to sales tax/value-added tax. Invoices shall not be payable as long as required details are missing. Invoice duplicates shall be marked as such.
- 4.2 The terms of payment, as individually agreed in the contract (order, confirmation of order) -especially the dates of payment -shall apply. Our payment shall be deemed made on time if our bank has received the remittance order within the period allowed for payment or the check has been sent off.
- 4.3 Unless otherwise agreed upon, payments shall be due
  - ▶ within 14 days less a 3% settlement discount
  - ▶ or within 30 days less a 2% settlement discount
  - ▶ or within 90 days net.
- 4.4 The period allowed for payment shall commence as soon as the delivery or service has been fully performed and a properly made-out invoice has been received. However, the period allowed for payment shall not start before the agreed date of delivery. If the supplier has to provide material tests, test reports, quality documents or other records, delivery and performance shall not be deemed completed until such documents have been received. A settlement discount may be deducted even if we offset sums or withhold payment in reasonable amounts due to defects; the period allowed for payment shall not start until after such defects have been fully remedied.
- 4.5 We shall fall into arrears only if we fail to effect payment following a reminder sent by the supplier after the purchase price has become due.
- 4.6 Payments shall not constitute any acknowledgment to the effect that deliveries made or services performed are in conformity with the contract. Any nonconforming delivery or service shall entitle us to withhold, without compensation, payment in reasonable amounts for any accounts receivable under the business relationship until proper performance has been effected. Any further rights shall remain unaffected.

### 5. Execution of Orders, Delivery

- 5.1 Passing orders on to any third party without our prior written consent shall be prohibited and entitle us to cancel the contract in full or in part and to claim damages.
- 5.2 Delivery and performance dates shall be agreed in the contract.
- 5.3 For the timeliness of deliveries or of any subsequent performance, their receipt at the receiving location specified by us shall be decisive, while acceptance shall be decisive for the timeliness of services, as well as for deliveries with installation or assembly.
- 5.4 Release orders shall be binding in respect to delivery time, as well as to the type and quantity of the goods called off.
- 5.5 Each delivery shall be accompanied by packaging slips or shipping notes showing our complete order IDs and providing a description of the content by type and quantity. Whenever a shipment is dispatched, we shall be notified immediately, with such notification furnishing the same details.
- 5.6 Instruments and equipment shall be delivered with a technical description and operating instructions free of charge. When it comes to software products, the obligation to deliver shall be deemed fulfilled if the complete (systems and user) documentation has been provided as well. Furthermore, any program specifically developed for us

shall be delivered in source format. The language of documents or operating instructions shall be agreed separately in the contract.

- 5.7 Partial delivery shall be permitted only with our approval.

### 6. Time Limits, Exceeding Time Limits

- 6.1 The time limits agreed for deliveries or services shall be binding. If so agreed in the contract, time limits shall be invariable.
- 6.2 In the event that a delay in delivery or service and/or subsequent performance is impending, we shall be advised promptly.
- 6.3 If the supplier is in delay, we shall be entitled to withdraw from the contract or claim damages for delay in performance after a reasonable grace period set has gone by without producing any result.
- 6.4 In so far as a time limit has been agreed as invariable, we shall be entitled, in the event of delay, to withdraw from the contract or, if the supplier has run into a delay, to claim damages for non-performance instead of demanding performance. Furthermore, we shall be entitled to demand performance despite delayed performance, provided we notify the supplier immediately after the expiry of the fixed date that we insist on performance. Apart from withdrawal or performance, our right to claim damages shall remain unaffected.

### 7. Force Majeure

- 7.1 With the exception of fixed date transactions, time limits or deadlines, whose observance is adversely affected by circumstances of force majeure, shall be extended by such a period of time as corresponds to the period of time within which the circumstances of force majeure persisted, plus a reasonable start-up period. The supplier shall notify us, within seven days, of any circumstance of force majeure that has occurred and come to his knowledge. If circumstances of force majeure render it unacceptable for us to be bound by the contract, we shall be entitled to withdraw from it.
- 7.2 Force majeure is an extraordinary, unforeseeable and unavoidable event (e.g., natural disasters, acts of terror, war, revolution, abduction, fire, etc.), whose effects cannot be averted by taking economically reasonable precautions. This also includes official actions and acts of government in so far as they have not been foreseeable or have not been caused or contributed to by any activity or omission attributable to the supplier. Periodically recurring natural events and unlawful lockouts do not constitute cases of force majeure.

### 8. Contractual Penalty

- 8.1 If the agreed time limit is exceeded for reasons within the supplier's control, we shall be entitled to claim a contractual penalty for each started week of delay. For each of the first four weeks, the contractual penalty shall be 0.5% and for each week following thereafter 1% of the value of the part of delivery or service not performed within the time limit set. However, the contractual penalty shall not exceed 5% of the value of the total contractual sum.
- 8.2 The contractual penalty shall count towards any damages that may be claimed for delay.
- 8.3 If the relevant reservation is not made at the acceptance of deliveries, services or subsequent performance, the contractual penalty for deliveries without installation and assembly may be claimed up to payment, while it may be claimed up to final payment for deliveries with installation and assembly and for services.

### 9. Transfer of Risk

- 9.1 For deliveries with installation and assembly and for services, the risk shall be transferred upon acceptance, while the risk for deliveries without installation or assembly shall be transferred upon delivery at the receiving location specified by us.
- 9.2 Acceptance shall be effected by a formal acceptance report to be signed by us and the supplier. All the complaints and objections made shall be entered into the report. Any unfinished work listed in the report, shall be completed by the supplier within a reasonable time limit agreed therein. We shall be given an official copy of the report.
- 9.3 Acceptance shall be deemed effected only if the report has been signed. Start-up or use shall not supersede our statement of acceptance.

### 10. Reservation of Title

- 10.1 In the event that goods are delivered subject to reservation of title, we shall have the right to resell the goods in the ordinary course of business. At the latest, we shall become their owner when the price has been paid in full.
- 10.2 Reservation of title may only be invoked by the supplier if he has withdrawn from the contract with legal effect.

### 11. Safety and Environmental Protection

- 11.1 Any delivery and service shall comply with applicable legal regulations, notably the Law Governing Medical Products (MPG) and the Electrical and Electronic Equipment Law (ElectroG), as well as with safety and environmental protection regulations, including the decrees relating to hazardous materials and the safety recommendations issued by the competent German bodies or professional associations (such as VDE, DIN, DIV). Together with the item delivered, the supplier shall supply relevant certificates, test certificates and supporting documents free of charge.
- 11.2 The supplier shall be solely responsible for the observance of accident prevention rules when effecting deliveries and performing services. The relevant safety rules to be applied and any manufacturer's instructions to be followed shall be provided free of charge with the items delivered.

### 12. Obligation to Take Back and Dispose of Old Electrical Equipment

If the supplier is a manufacturer of electrical and electronic equipment within the meaning of the Electrical and Electronic Equipment Law, he shall afford us a reason-

able possibility to return any old equipment sold as new equipment after the legal cut-off date on August 13, 2005. This shall not apply if we install the supplier's electrical and electronic equipment into our own equipment and make a separate disposal arrangement with the supplier.

### 13. Technical Records/Documentation/Confidential Information

- 13.1 We shall retain title to all the technical records, documentation, tools, molds, samples, designs, shapes, gauges, etc. made available by us. We shall remain the sole owner of all copyrights. The items and records referred to above, as well as the items made on the basis of them shall neither be passed on to any third party without our written approval nor used for purposes other than contractual ones. They shall be secured against unauthorized inspection or use. Such items and records may only be copied or duplicated in so far as such copying or duplication is required for the execution of the order. Subject to other rights, we may demand that such items, records and any duplicates thereof be surrendered if the supplier violates the obligations referred to above. Without being asked to do so, the supplier shall return to us such items, records, etc. and any duplicates thereof immediately after the order has been executed. The supplier shall have no right of retention.
- 13.2 The same shall apply if the supplier creates such items and records wholly or partly at our expense. It shall be understood that, through such creation, we shall become (co-) owners proportionate to our share in the creation costs, with the supplier keeping such items and records in custody for us free of charge. We shall be entitled at any time to acquire rights relating to the items and records in question against reimbursement of any outlays not yet amortized and demand that the items and records be surrendered. In so far as we consented to orders being passed on to third parties, such third parties shall be made to sign relevant written commitments.
- 13.3 The supplier shall keep confidential and not disclose to any third party any information received from us in connection with the order, unless he can prove to us that such information has been in the public domain or otherwise lawfully known to the third party.
- 13.4 The production for any third party and public presentation of items specifically made for us, notably those made on the basis of our drawings or performance specifications, as well as publications relating to the deliveries and services ordered, and any reference to such orders to any third party shall require our approval.
- 13.5 In so far as we consented to orders being passed on to third parties, such third parties shall be made to sign relevant written commitments.

### 14. Materials Provided

- 14.1 Any materials provided by us shall remain our property and shall be stored, marked and managed separately. They may be used for our orders only. The supplier shall provide compensation for any decrease in value or for any loss. This shall also apply to any billed, permitted use of order-specific material.
- 14.2 The processing or reshaping of the material shall be done for us. We shall become the immediate owner of the new or reshaped item. Should this be impossible for legal reasons, we are in agreement with the supplier that we are becoming the owner of the new item at any time during such processing or reshaping. Exercising the diligence of a prudent businessman, the supplier shall keep the item in custody for us free of charge.

### 15. Obligation to Inspect and to Report Defects, Cost of Inspection

- 15.1 To the extent advisable in the ordinary course of business, we shall be obligated to inspect the shipment immediately after it is received in order to determine whether it corresponds to the quantity and type ordered or whether it exhibits any externally visible transport damage or externally visible defects. Once a service has been performed, such service shall also be checked for completeness and correctness, provided such check is advisable in the ordinary course of business.
- 15.2 If we detect any defect as a result of the afore-mentioned checks, we shall report it to the supplier. Should we detect any defect at a later date, we shall equally report it.
- 15.3 Defects may be reported within one month of delivery or service or, if defects are not identified until processing or use, they may be reported within one month after their detection.
- 15.4 We shall be under no obligation to the supplier to perform any checks and notifications other than those specified above.

### 16. Liability for Defects

- 16.1 Unless longer periods are provided for by law, the supplier shall give a three-year guarantee for his deliveries and services. Such guarantee period shall start at the transfer of risk (Clause 9.1). For deliveries to locations at which we execute orders outside of our plants or shops, such period shall commence upon acceptance by our principal.
- 16.2 If defects are identified prior to or at the transfer of risk or during the period referred to in Clause 16.1, the supplier shall, at his own expense and at our option, either remedy the defects or make a replacement delivery or provide replacement service free of any defect. This shall also apply to deliveries in regard to which inspection is limited to random checks. We shall make our choice at our reasonable discretion.
- 16.3 If the supplier fails to effect subsequent performance within a reasonable time limit to be set by us, we shall be entitled, at our option,
- to withdraw from the contract or
  - to demand a price reduction or
  - to effect rectification or replacement delivery by ourselves at the supplier's expense or have such rectification or replacement delivery effected at the supplier's expense. This notwithstanding, we shall be entitled to demand damages instead of performance.
- 16.4 No time limit needs to be set if
- the supplier definitively refuses to perform,
  - the business in question is a fixed-date transaction,

c) there are particular circumstances which, while balancing the interests of both sides, warrant immediate withdrawal or the immediate assertion of a claim for damages.

- 16.5 Rectification may be performed at the supplier's expense without any time limit being set if performance is effected after the delay has occurred.
- 16.6 The same shall apply if we have a particular interest in immediate subsequent performance to avoid any delay on our part or in view of any other urgency (risk to operational safety, prevention of extraordinarily high damage).
- 16.7 Any further or other legal claims shall remain unaffected.
- 16.8 In so far as the supplier effects a replacement delivery or any rectification as part of subsequent performance, the time limit specified in Clause 16.1 shall start anew.
- 16.9 The supplier shall bear any costs incurred for the purpose of subsequent performance. Also, he shall bear the risk while the delivery item or the service is not in our custody due to rectification.

### 17. Liability for Violation of Property Rights

- 17.1 The supplier shall guarantee that no industrial property rights, including copyrights, will preclude the agreed use, and he shall indemnify us against any third-party claims. Such indemnity shall cover all the expenses and damage we may incur as a result of any third party liability claim.
- 17.2 The exclusive right of use and enjoyment and proprietary rights to samples, drawings, product descriptions, datasheets and other records of the supplier shall already be transferred to us at the conclusion of the contract in so far as they originate or are made in performance of the contract. We shall have the sole and exclusive right to use or exploit such results.
- 17.3 We shall be entitled to publish any work result created or produced for us. Publications by the supplier shall require our prior written approval.

### 18. Recourse in the Event of Defects in Material and Title

- 18.1 In the event that we have to take back a newly produced item because of its defectiveness, which is attributable to a defect in a delivery or service ordered from the supplier, or the buyer reduces the purchase price for this reason, no time limit need to be set for exercising our rights described in Clauses 16.2 and 16.3.
- 18.2 When it comes to the sale of a newly produced item, we may claim compensation from the supplier for those expenses which we had to bear in relation to the buyer of the item if the defect, in respect to which a warranty claim has been raised by the buyer, had already existed when the risk passed to us. In particular, the supplier shall reimburse us for the costs of any action brought by us in this context.
- 18.3 Should any defect in material manifest itself within six months of the transfer of risk to the buyer, the delivery or service shall be assumed to have already been defective when the risk was transferred to us.

### 19. Supplementary Provisions

Unless otherwise provided for in the Ordering Terms and Conditions, the provisions laid down in laws and regulations shall apply.

### 20. Place of Performance, Place of Jurisdiction and Governing Law

- 20.1 The place of performance shall be the receiving location/delivery address specified by us.
- 20.2 The contract shall exclusively be governed by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) and the rules of private international law shall not apply.
- 20.3 In the event of any dispute arising out of or in connection with the present contract, we shall be entitled to choose between recourse to general courts of law and to arbitral tribunals. Should any claim be asserted against us as a result of any dispute arising out of or in connection with the present contract, we shall be obligated to exercise our option within a reasonable period of time prior to the start of legal proceedings if the other Party so requests in due course. Only in the event of a refusal to choose or a late choice do we waive the defense of arbitral jurisdiction already now.
- 20.4 If recourse to arbitration proceedings is chosen, the following shall apply: Any disputes arising out of or in connection with this contract or its validity shall be finally decided pursuant to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) in force on the date when the contract is concluded and without recourse to the ordinary courts of law.
- The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be our place of business. The procedural law of this place shall be applied if the Rules of DIS do not provide for any relevant regulations. The language of the arbitral procedure shall be German. The substantive law of the Federal Republic of Germany shall apply without reference to any other law. The application of the United Nations Convention on the International Sale of Goods – U.N. Sales Convention (CISG) – and the reference regulations of the private international law shall be excluded. The arbitration award shall give reasons in writing. The court of arbitration shall also order costs of the suit and necessary expenses of the parties.
- 20.5 If recourse to general courts of law is chosen, the following shall apply: The place of jurisdiction shall be our place of business. However, we shall also be entitled to sue the supplier at any other legal venue.
- 20.6 If individual provisions of the contract are or become invalid, the validity of the remaining terms of the contract shall not be affected. The eliminated provision shall be replaced by a term that comes the closest to the purpose of the provision that has been eliminated.