



General Terms and Conditions of NeXaT GmbH

Valid from 01.01.2020

I. General information

The following terms of delivery apply to all contracts, deliveries, and other services, including all consulting services that are not the subject of a separate consulting contract and, unless they are amended or excluded with the express written consent of the seller. These terms apply to contracts made with customers defined as entrepreneurs under Section 14 of the German Civil Code (BGB) or legal entities under public law and special funds under public law. Full-time or part-time farmers who generate income from their activities are not consumers within the meaning of the law. The Buyer's terms and conditions shall not become part of the contract even if the Seller does not object to them again and provides the contractually owed delivery/service without reservation. Agreements deviating from these terms and conditions should be included in the order confirmation.

II Offer and scope of delivery

1. The Seller's offers are always subject to change without notice. The documents belonging to the offer, such as illustrations, drawings, weights, and dimensions, are only approximate unless they are expressly designated as binding. Changes are unreasonable and go beyond what is customary in the trade shall not be accepted by the Buyer. Services and operating costs are stated as average values. The Seller reserves the right of ownership and copyright to cost estimates, drawings, and other documents; they may not be made accessible to third parties.
2. Unless another delivery period is expressly specified, the buyer is bound to the order for a maximum of 6 weeks. The purchase contract is concluded when the seller has confirmed acceptance of the order for the specified object of purchase in writing within this period or the delivery has been carried out. However, the seller is obliged to notify any rejection of the order in writing without delay.
3. All agreements made between the seller and the buyer must be recorded in writing in the respective delivery contract. This also applies to ancillary agreements and assurances. Subsequent amendments to the contract that are agreed verbally shall be promptly set out in writing by the contracting parties and added to the supply contract as an addendum.
4. Details in the descriptions provided to the buyer regarding the scope of delivery, appearance, performance, dimensions, weights, consumption of operating materials and operating costs are part of the contract. They serve as a yardstick for determining whether the object of purchase is free of defects. We reserve the right to make changes to the design and form of the delivery item, provided that the delivery item is not significantly changed, and the changes are reasonable for the buyer.

III Price and payment

1. In the absence of a special agreement, the prices shall apply ex warehouse of the Seller or, in the case of shipment from the manufacturer's works, ex works. Delivery and shipping costs are not included in the price. The prices do not include the applicable value added tax. If delivery is to take place more than 4 months after conclusion of the contract, the Seller shall be entitled to demand negotiations on a new price in the event of price increases by its suppliers or unexpected increases in wage and transportation costs. The Seller shall only be bound to the agreed price for the agreed delivery period - but for at least 4 months. The Seller may demand compensation from the Buyer for any additional expenses incurred by the Seller due to the Buyer's default of acceptance.
2. In the absence of a special agreement, payment shall be made upon delivery or provision and receipt of the invoice without any deductions within 12 days free to the seller's paying agent. This shall not affect the rights of retention to which the Buyer is entitled under § 320 BGB.



3. Promised discounts shall only apply if the buyer is not in arrears with the payment of previous deliveries.
4. The seller shall only accept discountable and properly taxed bills of exchange on account of payment if agreed accordingly. Credits for bills of exchange and checks shall be made subject to receipt less expenses with value date of the day on which the seller can dispose of the equivalent value.
5. Offsetting against any counterclaims of the buyer that are disputed by the seller or have not been legally established is not permitted. The Buyer may only assert a right of retention insofar as it is based on claims arising from the purchase contract. If a notice of defects is asserted, payments by the Buyer may be withheld to an extent that is in reasonable proportion to the defects that have occurred.
6. Payments may only be made to employees of the seller if they present a valid authorization to collect.

IV. Delivery periods and delay

1. Delivery periods and dates are only agreed as binding if they have been expressly designated as such by the seller. The delivery period begins with the conclusion of the contract, but not before the provision of any documents, approvals, releases to be procured by the buyer and not before receipt of an agreed down payment.
2. Correct and punctual self-delivery is reserved.
3. The delivery period shall be extended appropriately in the event of measures within the framework of lawful labor disputes, in particular strikes and lockouts, as well as in the event of unforeseen obstacles which are beyond the control of the seller or its vicarious agents, insofar as such obstacles demonstrably affect the delivery of the sold item.
4. The same applies if the seller is not supplied on time. The seller is entitled to withdraw from the contract if the manufacturer does not supply him. However, this shall not apply if the Seller is responsible for the non-delivery (e.g. default of payment).
5. Compliance with the delivery period presupposes the fulfillment of the buyer's contractual obligations.
6. If the buyer suffers damage due to a delay, the seller shall be liable in accordance with the statutory provisions.
7. The Seller shall not be liable for deliveries delayed or omitted (impossibility) due to the fault of its upstream supplier - except for fault in selection or supervision. Sentence 1 shall not apply if the relationship between the Seller and the Buyer is governed by the law on contracts for work and services. In any case, the Seller is obliged to indemnify the Buyer if the latter is unable to fully enforce the claims assigned to it against the supplier.
8. In addition to the statutory period pursuant to Section 286 (3) BGB and the reminder, the Seller may also set the Buyer in default in deviation from the period pursuant to Clause III.2. by means of a different payment deadline that can be determined according to the calendar within the meaning of Section 286 (2) BGB.
9. If the buyer defaults on his payment obligation, default interest of 5% above the respective base interest rate p.a. (§ 247 BGB) shall be charged. The assertion of higher damages caused by default remains reserved. If the seller asserts a higher damage caused by default, the buyer has the opportunity to prove that the claimed damage caused by default did not occur or at least occurred in a significantly lower amount.

V. Transfer of risk and transportation

1. In the absence of a special agreement, the route and means of shipment shall be at the discretion of the seller.



2. In the case of sale by delivery to a place other than the place of performance, the risk shall pass to the Buyer when the goods are handed over to the forwarding agent or carrier, but at the latest when they leave the warehouse or, in the case of direct shipment ex works, when they leave the factory. This shall also apply if partial deliveries are made or if the seller has assumed further services. The goods shall be insured at the request and expense of the Buyer.
3. If the shipment is delayed due to circumstances for which the buyer is responsible, the risk shall pass to the buyer from the day of the offer of handover. However, the seller is obliged to arrange the insurance requested by the buyer at the buyer's request and expense.
4. Delivered items shall be accepted by the Buyer, even if they have minor defects, without prejudice to the rights under Section VII (Notice of Defects and Liability for Defects).
5. Partial deliveries are permissible insofar as this is reasonable for the buyer.

VI Retention of title

1. The seller reserves the right of ownership until all claims arising from the business agreement with the buyer have been paid in full.
2. The Buyer is obliged to treat the object of purchase with care, to secure it against interference by third parties and - if this has been agreed in writing, an extended payment term has been granted or it is a financing purchase - to insure it immediately against fire, theft and water damage at replacement value and to provide evidence of this on request; otherwise the Seller is entitled to insure it himself at the Buyer's expense. The buyer undertakes to assign any claims for compensation to the seller.
3. The Buyer may not pledge the object of purchase or assign it as security without the Seller's consent. The Buyer is obliged to notify the Seller immediately in writing in the event of seizure or other interventions by third parties so that the Seller can bring an action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse the Seller for the court and out-of-court costs of an action pursuant to Section 771 ZPO, the Buyer shall be obliged to compensate the Seller for the costs.
4. The buyer is entitled to resell the goods in the ordinary course of business. However, he hereby assigns to the seller all claims in the amount of the seller's final invoice amount (including VAT) which accrue to him from the resale against his customers or third parties, irrespective of whether the object of purchase has been resold without or after processing. The buyer is authorized to collect these claims even after assignment. The seller's right to collect the claims himself remains unaffected by this, but the seller undertakes not to collect the claims as long as the buyer duly fulfills his payment obligations. Otherwise, the Seller may demand that the Buyer informs him of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtor of the assignment.
5. If a vehicle registration document has been issued for the object of purchase, the seller shall have the sole right to possession of the vehicle registration document for the duration of the retention of title.
6. In the event of breach of contract by the Buyer, in particular in the event of default in payment, the Seller shall be entitled to take back the goods after issuing a reminder and a declaration of rescission and the Buyer shall be obliged to surrender the goods.
7. The buyer shall bear all costs of taking back and realizing the object of purchase. The utilization costs shall amount to 10% of the utilization proceeds including VAT without proof. They shall be set higher or lower if the seller proves higher costs or the buyer proves lower costs. The proceeds shall be credited to the buyer after deduction of the costs and other claims of the seller in connection with the purchase contract.



VII Industrial property rights, software

1. The customer shall inform us immediately in writing if claims are asserted against him due to the infringement of industrial property rights or copyrights in connection with our deliveries and services or if he otherwise becomes aware of such claims.
2. In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfill the contractually agreed functions, or procure the right of use for the customer by concluding a license agreement with the third party. If we do not succeed in doing so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the customer are subject to the limitations of Section VIII. of these General Terms and Conditions.
3. In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and upstream suppliers for the account of the customer or assign them to the customer. In such cases, claims against us shall only exist in accordance with this Section VII if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or has no prospect of success, e.g. due to insolvency.
4. If the scope of delivery also includes software or software products (hereinafter "Software"), the following provisions shall apply:
 - 4.1 The regulation covers both the system programs of the operating system and the application programs for solving the special operational tasks, including the source and machine programs together with the entire associated manufacturer or user documentation, which is intended or suitable for promoting the understanding or application of a computer program, in particular problem descriptions, system analyses, user instructions, data flow and program flow charts, test aids, etc. The validity of these provisions is independent of the respective program language used and the type of embodiment of the software in written form or the fixation on any data carriers such as fixed memory, main memory, flash memory, floppy disks, microprocessors, etc.
 - 4.2 The software included in the scope of delivery has been developed by us or on our behalf or is available to us for commercial use and distribution based on licenses granted by third parties. Some of these programs and data for the computer-controlled automatic operation of the machines and systems supplied are copyright-protected works in accordance with Section 2 (1) (1) of the German Copyright Act (UrhG). The programs and the accompanying documentation have also been developed by the licensor, by us or for us at considerable time and expense. They are not in the public domain but constitute business and trade secrets which are entrusted to the customer and which the customer undertakes to keep confidential.
 - 4.3 We grant the customer a simple, non-exclusive right to use the software. The right of use is limited to the control of those machines or products for which the software has been supplied. The right of use is limited in time by the service life of the machine supplied.
 - 4.4 It is not transferable to third parties without our express consent in text form. In the event of the sale of the delivered machine to third parties, we are obliged to give our consent only if the purchaser unconditionally and legally assumes all obligations arising for the customer regarding the software on the basis of these terms and conditions. In this case, the customer shall hand over the entire software to the purchaser without retaining any copies.



- 4.5 The customer undertakes to keep the software entrusted to him secret and to destroy it when the machine supplied is decommissioned. In the interest of confidentiality within his company, he shall only make the software accessible to those persons who absolutely have to work with it, who are reliable and who have assumed the obligation of confidentiality. The customer is obliged to prohibit third parties from gaining access to an object that stores or reproduces the software and to exclude this possibility by means of suitable measures.
5. The customer undertakes to refrain from doing so:
 - 5.1 copy or reproduce the software by any means or in any form whatsoever;
 - 5.2 decrypt or reverse engineer the software and/or its underlying source code or make it public in any other way;
 - 5.3 to sell, rent, license, or otherwise make the software available to a third party for use or to use the software or an unauthorized copy or replica of the software to control a machine with information-processing capabilities, with the exception of the machine supplied by us for which the respective program is intended.
6. Changes to the content of the software supplied, including for the purpose of customization by the customer, are only permitted with our prior consent in text form.
7. The customer's obligations to maintain confidentiality, to refrain from copying, disseminating, processing, using in breach of contract based on the above provisions shall continue to exist even after the respective contract has been completed and even after the machine supplied has been destroyed. They shall only end with the expiry of the intangible rights protected by the agreements made in this clause or with the disclosure of the trade secrets.
8. The customer shall not remove or change manufacturer's specifications without our prior written express consent. We reserve all other rights to the software, including copies.

VIII. Notice of defects and liability for defects

The seller is liable for defects as follows:

1. The Buyer shall inspect the goods received immediately upon arrival for quantity, quality and warranted characteristics and shall promptly notify the Seller in writing of any obvious defects. If the contract is a commercial transaction for both parties, § 377 HGB (German Commercial Code) shall apply with the proviso that recognizable defects must be reported to the seller in writing within 14 days.
2. Goods that prove to be unusable or significantly impaired in their usability as a result of a circumstance prior to the transfer of risk - in particular due to faulty design, poor materials or defective workmanship - shall be repaired or replaced free of charge. The right to choose in this respect lies with the seller. Replaced parts shall become the property of the seller. If the entire purchased item is replaced by way of subsequent performance, the seller shall be entitled to unlimited compensation for use from the buyer for the item taken back. The compensation for use shall be based on the average rental costs for the item that would have been incurred during the period of use.
3. The buyer's right to assert claims arising from defects shall expire 12 months after the transfer of risk in the case of new items sold. In the case of used goods, the buyer shall only be entitled to assert claims for defects if this has been expressly agreed in writing with the seller.



4. No warranty is given for damage caused by the following reasons: Unsuitable or improper use, incorrect assembly or commissioning by the buyer or third parties, neglected maintenance work if this is usual and/or recommended by the manufacturer, normal wear and tear - in particular of wearing parts -, incorrect or negligent handling, unsuitable operating materials, replacement materials, defective construction work, unsuitable building ground, chemical, electronic or electrical influences, insofar as they are not attributable to a fault on the part of the seller.
5. In the event of rectification of defects, the Buyer shall set the Seller a reasonable deadline for the necessary work. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the seller must be notified immediately, or if the seller is in default with the rectification of the defect, shall the buyer have the right to have the defect rectified by a third party and to demand reimbursement of the necessary costs from the seller.
6. Claims for defects for replacement parts and repairs shall become time-barred after 12 months. The period for liability for defects in the delivery item shall be extended by the duration of the interruption in use caused by the repair work.
7. Any modifications or repair work carried out improperly by the Buyer or third parties without the Seller's prior consent shall invalidate any liability for the resulting consequences.
8. If a rectification or replacement delivery to be performed by the seller fails despite several attempts, the buyer may withdraw from the contract (withdrawal) or demand a corresponding reduction in payment (reduction). Considering the burden on the Buyer and the complexity of the defect, the Seller shall generally be given two opportunities for subsequent performance within a reasonable period of time.
9. Section VIII applies to claims for damages.

IX. Limitation of liability - Compensation

1. The Seller's liability shall be governed by the statutory provisions. However, this is excluded - irrespective of the legal grounds - insofar as there is a non-material breach of duty that was neither intentional nor grossly negligent. This shall not apply if damage to life, body or health has occurred or if liability insurance cover exists in favor of the seller. In this case, the seller assigns his claim against the insurance company to the buyer.
2. The claims to be asserted by the Buyer against the Seller shall become time-barred in accordance with the statutory provisions. However, there is a preclusion period of six months if the seller has rejected a claim by the buyer in writing as unfounded.

X. Place of performance, place of jurisdiction, applicable law

1. The place of performance and exclusive place of jurisdiction for delivery and payments as well as for all disputes arising between the parties from the contractual relationship shall be the Seller's head office if both contracting parties are merchants within the meaning of the German Commercial Code (HGB) or legal entities under public law or special funds under public law (§ 38 ZPO). Otherwise, the statutory provisions shall apply.
2. The relationship between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

XI. Data protection

Data processing is carried out for the performance of a contract and for direct marketing and is based on Art. 6

Para. 1 b), f) GDPR. The data will only be passed on to third parties within the scope of and for the purpose of providing credit information to corresponding credit agencies. The data will be deleted as soon as it is no longer required for the fulfillment of the purpose. The buyer can object to the use of his data for the purpose of direct advertising at any time and is entitled to request information about the data stored by the seller and to request the correction or deletion of the data. In addition, the buyer has the right to lodge a complaint with the supervisory authority (State Commissioner for Data Protection).