

GENERAL DELIVERY CONDITIONS

of NAF Neunkirchener Achsenfabrik AG for Use in Business Transactions with Commercial Enterprises with their Respective Seat Outside of Germany
Stand 15.12.2015



1 General Provisions; Scope

- 1.1 These General Delivery Conditions (hereinafter also referred to as „GDC“) shall apply to legal relationships between NAF Neunkirchener Achsenfabrik AG (hereinafter also referred to as „NAF“) and its customers in relation to goods and/or services (hereinafter also referred to as „deliveries“) to be provided by NAF. These GDC hereby expressly include all services of NAF (e.g. substitute deliveries, installation work).
- 1.2 The GDC shall apply only for contracts of NAF with commercial enterprises.
- 1.3 These General Delivery Conditions shall apply exclusively in relation to deliveries within the scope hereof. Any contradictory conditions or conditions of the customer deviating from these General Delivery Conditions will not be binding for NAF unless NAF has expressly agreed to the application of such in writing. These General Delivery Conditions shall apply also if NAF undertakes a delivery to the customer without any reservations notwithstanding NAF being aware of conflicting conditions or conditions of the customer deviating from these General Delivery Conditions.
- 1.4 These General Delivery Conditions shall apply also to future deliveries of NAF to the customer.

2 Procedures up to the Time of Contract Formation; Forecast of Requirements

- 2.1 The procedures leading up to the formation of a legally binding contract between NAF and the customer shall be as follows: The customer shall, normally by means of a data information sheet, make a non-binding inquiry to NAF. NAF shall discuss with the customer by way of a consultation procedure the basic technical and commercial feasibility of such on a non-binding basis. All details developed thereby such as, for example, drawings, illustrations, offers, measurements and weights shall remain non-binding at this stage. Only at the end of the consultation process shall the parties determine in a binding manner the exact specifications of the respective delivery by way of binding drawings including all relevant data (hereinafter referred to as „installation drawings“). Only thereafter shall the customer initiate an order to NAF based on the last applicable version of the installation drawings and the order shall constitute a legally-binding offer. A contract shall be first formed with the legally-binding acceptance of such an offer being made by NAF.
- 2.2 The parties may reach an agreement as to future delivery quantities also by way of a forecast of requirements. In such case the quantities set down for a period of up to four months shall be binding. In this regard the customer will be obliged to take and pay for the delivery. The quantities set down for the fifth and sixth months shall entitle NAF to purchase the necessary raw materials and materials in advance from its suppliers with a reasonable lead time. In case of non-acceptance the customer shall reimburse the respective expenses. Insofar as any forecast of requirements gives details in relation to a sixth month and beyond, such shall be merely requirement planning for both parties.

3 Special Conditions for Prototype Orders (Procedures in Case of Series-Production Readiness, Pilot Production); Cooperation; Duties to Provide Support; Expenses; Target Specifications

- 3.1 The following special conditions shall apply on a supplementary basis for any orders for prototypes (pilot production) with the aim of obtaining series approval (procedures in case of series-production readiness). If such a special situation exists it should be clearly identified in the order process.
- 3.2 The parties shall cooperate in a particularly close and trusting manner for the introduction of series production. This shall apply in particular to the exchanging of information concerning relevant knowledge and circumstances as well as rights of inspection and testing for NAF.
- 3.3 The customer shall notify NAF on an unsolicited basis in each case of any apparent defects and, in addition to its own testing the customer shall also carry out tests on the basis of the requirements of NAF and it shall communicate the results of which with all related documentation (e.g. installation information) as well as complete information of all relevant facts concerning the target of series production. This shall also apply to any parameter changes such as, for example, design changes, the use of alternative materials or tools or changes in legal requirements.
- 3.4 In addition, NAF is entitled to take a reasonable number of random samples and undertake random examinations either on site or at the works of NAF. In the latter case the customer shall be obliged to remove any part required by NAF and to send such to NAF. Generally, an examination at the works shall take place at least after 1000 hours of operation.
- 3.5 Any rights to claim based on necessary interruptions to operations or loss of use in terms of the procedures for series-production readiness are hereby excluded. In addition, each party shall bear its own costs (including personnel costs and any fees for third parties) and expenses (including installation and disassembly costs, packing and transport costs, as well as travel costs) insofar as the parties have not agreed otherwise in any particular case.
- 3.6 The target specifications for the product shall be determined for the future, at variance to the normal procedures (compare to section 2.1) where the installation drawing determines the target specifications, by way of the series approval given by NAF. This shall apply also in relation to the warranty rights of the customer. The requirements of a prototype shall be for its use for testing and development purposes only. In particular there shall be no rights to claim at any time in relation to a prototype for pilot production being refitted with target specifications for series approval

4 Rights to Documentation and Developments; Title to Tools

- 4.1 NAF reserves to the full extent permissible all property and intellectual property exploitation rights to all documentation, technical, commercial and other business data or information in a tangible or intangible form as well as to all developments and samples. This shall apply in particular to any price estimates, drawings, as well as designs and development and in particular those arising out of or in connection with the procedures covered in sections 2 and 3.
- 4.2 The customer is not entitled in this regard to register any patents or other property rights. Unless such are expressly granted the customer shall not receive any rights in terms of title, licences, reproduction, use or any other rights.
- 4.3 Documentation may be used by third parties only for the purposes of carrying out the contract and subject to the precondition that confidentiality agreements as set out under section 14 have been entered into and such documentation shall, in case of a contract not being formed between the parties, be returned upon request.
- 4.4 If NAF produces or develops tools in connection with any order, such shall remain the sole property of NAF alone.

5 Prices; Payment Conditions; Set-off; Right of Retention

- 5.1 All prices are „ex works“, plus the costs of packing, transport or shipping as well as any customs and other duties. In addition, the respective applicable transaction taxes (Verkehrssteuer) at the respective applicable amount shall apply.
- 5.2 Payments shall be made immediately upon receipt of invoice without any deductions for prompt payment. Payment shall be made to the bank account detailed by NAF. Any other method of payment shall not be accepted. Interest for delayed payment shall be at the rate of eight percentage points above the respective statutory basis interest rate.
- 5.3 The customer shall be entitled to set-off against any claim of NAF only if such claims of the customer have been confirmed by court judgment, are undisputed or have been acknowledged by NAF.
- 5.4 The customer is entitled to exercise any right of retention only insofar as its counterclaims are based on the same contractual relationship.

6 Retention of Title

- 6.1 Notwithstanding any delivery or transfer of risk, NAF shall retain title to the goods supplied in the delivery (hereinafter referred to as „reserved goods“) until receipt of all payments arising from the commercial relationship with the customer. In the event of any contractual breach by the customer, in particular in case of any default in payment exceeding 14 days, NAF may take back any reserved goods. NAF is entitled to take back any reserved goods for the purposes of selling such and the moneys received from such sale shall be calculated against any outstanding debts of the customer – minus any reasonable costs incurred. Similarly, the right of setting-off the goods value in relation to any outstanding payment debt of the customer may also be undertaken. In addition, the customer shall receive a statement concerning such. This shall not affect any rights of NAF at law to terminate the contract.
- 6.2 The customer shall handle any reserved goods with care; in particular the customer shall at its own expense insure such reserved goods against the risks of fire, water and theft to sufficient extent so as to cover the original value. Insofar as any maintenance or inspection work is necessary, the customer shall carry out such at its own expense in good time.
- 6.3 In case of any attachment procedures or other claims by third parties the customer shall notify NAF without undue delay in writing so that NAF can initiate legal proceedings or undertake any other legal measures to protect its legal rights. Insofar as any third party is not able to reimburse to NAF any court or out-of-court costs for legal proceedings, the customer shall be liable to NAF for the loss resulting. The same shall apply if the customer does not notify NAF within a reasonable time of the actions of the third party.
- 6.4 The customer is entitled to sell reserved goods in the ordinary course of business. Any moneys or claims in relation to third parties derived from such resale by the customer shall belong to NAF to the full amount of the invoice price (including any legal transaction taxes) regardless of whether or not the reserved goods are resold with or without further processing. The customer is entitled to enforce such claims in relation to third parties. The authority of NAF to collect such moneys itself shall not be affected hereby. However, NAF undertakes not to collect such moneys provided that the customer fulfils its payment obligations arising from the moneys received for the reserved goods, does not become in default with its payment and provided that no application has been made for the commencement of insolvency proceedings and payments have not ceased. If any one of the above occurs, NAF may require that the customer notifies NAF of all claims against its debtors and provide all necessary details for the collection of such and further that the customer provides all related documentation and notifies the debtors (third parties) of the situation.
- 6.5 If the reserved goods are processed with other goods not belonging to NAF, NAF shall acquire part-ownership of the new object in proportion to the value of the reserved goods (final invoiced amount, including transaction taxes) compared to the other processed goods at the time of processing. In relation to the objects resulting from such processing the same shall apply as for reserved goods.



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- 6.6 If the reserved goods are mixed with other goods not belonging to NAF, NAF shall acquire part-ownership of the new object in proportion to the value of the reserved goods (final invoiced amount, including transaction taxes) compared to the other mixed goods at the time of mixing. If such mixing is such that the object can be regarded as consisting mainly of the goods of the customer, it shall be deemed to have been agreed that the customer shall transfer to NAF a proportionate part-ownership. The customer shall protect the resulting sole ownership or part-ownership on behalf of NAF.
- 6.7 NAF hereby undertakes to release any of the securities available to it at the request of the customer insofar as the value of the securities exceeds any claims; the choice of which securities are to be released shall be made at the discretion of NAF.

7 Delivery Time; Default Delay in Delivery

- 7.1 Delivery times provided by NAF shall commence to run only after all technical questions have been clarified. The customer must provide support for such clarification.
- 7.2 Any duty of compliance with a delivery time of NAF is also subject to timely and correct completion of duties and obligations by the customer. In particular, the customer shall provide support for any delivery and inform NAF within a reasonable time concerning any obstacles to delivery within the sphere of the customer. Any legal right to plea on the basis of the contract obligations not being fulfilled shall be reserved.
- 7.3 A delivery time shall be deemed to have complied with if, before the expiry of such time, the delivery is notified to the customer as being ready for shipping and made available for loading.
- 7.4 In the event of non-compliance with any delivery time resulting from force majeure including any obstacles, accidents or disruptions which, notwithstanding exercising the necessary due care, cannot be avoided, the delivery time shall be extended to a reasonable extent accordingly. Force majeure shall include in particular any mobilisation, war, unrest, terrorism, act of any sovereign, failure to issue necessary export permits, epidemic, strike or lock-out, shortage of raw materials, lack of transport capacity, power outages or natural events. NAF shall notify the customer in writing of any such force majeure event preventing delivery without undue delay. The same shall apply in the case of the ending of the obstacle to delivery.
- 7.5 If in the agreed delivery a special performance time is fixed or if any delay in delivery for which NAF is responsible entitles the customer to declare that its interest in a continued performance of the contract no longer exists, NAF undertakes - insofar as the customer can credibly demonstrate that actual damage has occurred within a reasonable period of time - to pay lump sum compensation. This shall be 0.5 % of the value of the delivery or part thereof for each completed week of default delay by NAF, but totalling no more than a maximum amount of 5 % of the respective value.
- 7.6 Otherwise, in the event of delayed delivery any other rights of the customer to compensation as a result of the delay or in lieu of performance beyond those limits set out in section 7.5 above are hereby excluded.
This shall not apply insofar as NAF would be liable under the provisions of mandatory law.
- 7.7 Insofar as, in accordance with the provisions of law related to delays in delivery by NAF, the customer has a right to withdraw from the contract (Rücktritt), the exercise of such right of withdrawal shall require the customer to notify NAF within a reasonable period of time of the successful delivery that it intends to withdraw.

8 Transfer of Risk; Part Deliveries; Packing

- 8.1 The risk of any accidental damage or accidental loss of a delivery shall transfer to the customer upon the making available of the delivery for loading at the works of NAF and successful notification of its readiness for shipping. This shall also apply if any part-deliveries are made, if NAF bears any shipping costs or undertakes other performance (e.g. supply or erection) or any duties of support (scheduling coordination in transport or support in unloading).
- 8.2 If so requested by the customer, NAF shall arrange at the expense of the customer for shipping insurance for deliveries. No changes to the transfer of risk under section 8.1 shall take place as a result.
- 8.3 NAF is entitled to check on compliance with the safety requirements at law for transport and if necessary to hold back any transport. In such case the customer is not entitled to make any claims against NAF unless the holding back of the transport was without justification and NAF should have been aware of such.
- 8.4 NAF is entitled to make part-deliveries insofar as such is reasonable for the customer.
- 8.5 Transport packing and other packing in accordance with the requirements of the Packaging Regulations (Verpackungsverordnung) will not be taken back

9 Procedures for Making a Complaint (Notice of Defect); Defect Liability

- 9.1 Any rights of the customer to claim on the basis of defects in the goods is subject to the condition that the customer inspects the goods having regard to the normal commercial practices and the requirements of mandatory law as soon as possible after delivery and the transfer of risk having regard to the circumstances. The customer is not entitled to make any claim for a defect if such is not notified to NAF within a reasonable time

after the defect has been detected or should have been detected. After the expiry of this period for the making of a claim, the customer shall be entitled to lodge a claim for the defect only if NAF has acted so as to grossly breach the contract (grob vertragswidrig) or contrary to the principles of good faith (Treu und Glauben).

- 9.2 Before exercising any rights to claim for defects the customer shall initially check carefully as to whether the apparent defect is caused by circumstances within the customer's control or whether such is in fact a defect. In the latter case, the parties shall agree, if possible, as to whether a defect in fact exists. If any notice of defect is unjustified, NAF is entitled to claim compensation from the customer for any expenses it incurs in relation thereto.
- 9.3 The right to claim for defects shall not exist in relation to any matters which
- are caused by measures or designs which the customer has expressly required or,
 - are caused by incorrect installation or connections or incorrect storage or,
 - relate to materials or products which the customer has made available or in relation to which the use has been expressly required by the customer notwithstanding information to the contrary from NAF.

A defect shall not exist if,

- there is only a minor deviation from the agreed quality or,
- there is only a minor limitation of usability or,
- such is the result of normal wear and tear.

There shall be no right to claim for defects in cases of damage resulting from defective or careless use, excessive stress, overloading, unsuitable equipment, defective construction work, unsuitable subsoil or on the basis of any other influences which have not been taken into account in the contract.

In the event that the customer or any third party undertakes improper changes or maintenance work there shall also be no right to claim for defects for such matters or the resulting consequences thereof.

- 9.4 Insofar as a defect exists, NAF may at its choice and within a reasonable period provide supplementary performance (Nacherfüllung) in the form of a rectification of defect or it may supply a new, defect-free object. NAF shall also bear the costs, and in particular those related to transport, road, work and material necessary for the purposes of the supplementary performance insofar as such are not increased by the delivered objects being subsequently transported to another place other than the premises of the customer; this is not the case if such transport corresponds with intended use. In terms of any supplementary performance, NAF is not obliged to bear the costs of installation or removal of any defective delivery.
- 9.5 The customer shall, insofar as it is reasonable for it to do so, provide technical support for any supplementary performance by NAF. In particular, the customer shall advise of any technical peculiarities or special risks (e.g. during removal or installation) which may result from the processing or connection of the delivery by the customer. If necessary, the customer shall make available to NAF technical personnel of the customer or sub-contracted third parties for the purposes of giving advice.
- 9.6 Notwithstanding sections 9.4 and 9.5 and the procedures set out therein, the customer may after receiving the written approval of NAF, undertake any rectification of a defect itself. NAF shall regularly provide such approval if the customer has sufficient personnel trained by NAF on site. In addition, the customer must comply with any repair instructions provided by NAF. In such case NAF shall bear only those necessary work and material costs at conditions to be agreed and shall make available any necessary spare parts at no charge. Transport costs and road costs shall in such case not be borne by NAF. The costs of installation or removal of any defective delivery shall also not be borne in such case by NAF. The customer shall document any defect and its rectification in a comprehensible manner and provide NAF without any limitation and at any time information as to the determined cause of the defect and shall further provide information as to all of the circumstances connected with the defect and its rectification. This includes a right to test any parts removed at the works of NAF as well as on-site inspections. In addition, NAF is entitled to send its own employees to the defect rectification procedures or specific stages thereof.
- 9.7 In the event that any supplementary performance to which the customer is entitled is not successful and NAF is not at fault in this regard, the customer is, at the customer's discretion, entitled to a reduction of price (Minderung) or to withdraw from the contract subject to the following limitations.
The customer may withdraw from the contract on the basis of a defect only if the contract breach is the result of a defect which is of material significance for the customer and NAF was aware of or should have been aware of such. However, the customer shall not be entitled to withdraw from the contract if it does not notify NAF of the withdrawal from the contract within a reasonable time after the customer became aware of the defect or should have become aware of the defect or after the expiry of the time for the rectification of the defect or the undertaking of supplementary performance in accordance with paragraph 1 of this section. This loss of a right to withdraw shall not apply if NAF acts so as to grossly breach the contract or contrary to the principles of good faith.
- 9.8 Any rights of the customer to claims for damages shall be excluded insofar as and to the extent that NAF is not liable on the basis of mandatory law to also pay damages.
- 9.9 Insofar as the customer, as a result of a defect in an object supplied by NAF, is made subject to any third party claims, the right of the customer to claim recourse from NAF shall exist only insofar as the customer has agreed with its buyer to conditions that do not exceed the legal rights of



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claim in relation to defects. The scope of such a right of recourse of the customer in relation to NAF shall also be subject to the conditions under section 9.4 sentence 2 and sentence 4 of these GDC.

9.10 The limitation period for all claims covered under this section shall be in accordance with section 13.

10 Condition Precedent

Contractual performance is subject to the condition that there are no obstacles to such under German, US as well as any other applicable national, EU or international law or regulations concerning international trade as well as any embargos or other sanctions. The customer shall provide all information and documentation necessary for export, shipment or import.

11 Impossibility; Adjustment of Contract

11.1 Insofar as any delivery is impossible, the customer is entitled to claim damages unless NAF is not responsible for the impossibility. However, any right to claim damages on the part of the customer shall be limited to 10 % of the value of the respective part of delivery which cannot be correctly provided as a result of the impossibility. This limitation shall not apply insofar as mandatory provisions of law are responsible and in particular in case of material breach of contract by NAF. No change of the burden of proof to the disadvantage of the customer shall result from the above. The right of the customer to withdraw from the contract shall not be affected hereby.

11.2 Insofar as any events in terms of section 7.4 substantially change the commercial significance or contents of the delivery or have a major impact on the operations of NAF, the contract shall be adjusted accordingly in accordance with the principles of reasonableness and fairness. If this is not commercially reasonable, NAF may withdraw from the contract. The same shall apply if any necessary export permits are not issued or cannot be used. If NAF wishes to exercise its right of withdrawal, NAF shall notify the customer as soon as possible after becoming aware of the impact of the circumstances and even if an initial agreement has been reached with the customer as to an extension to delivery times.

12 Other Liability

12.1 Any further rights of the customer to claim damages, regardless of the legal basis therefor, other than those expressly set out in these General Delivery Conditions are hereby excluded. This shall include all claims resulting from an interruption of operations, loss of profit, loss of information or data or consequential damages resulting from any defect.

12.2 The above named limitations of liability shall not apply insofar as NAF is liable to pay damages on the basis of mandatory provisions of law such as, for example:

- a) non-compliance with an accepted guarantee or agreed quality,
- b) in accordance with mandatory requirements of product liability,
- c) as a result of a breach of a contractual obligation the fulfilment of which is necessary for the performance of the contract and upon which the customer should normally be able to rely (so-called material contractual obligation (wesentliche Vertragspflichten)).

Any right to claim damages for breach of a material contractual obligation is, however, limited to typical, foreseeable damage insofar as liability is not unlimited in accordance with the mandatory provisions of law. No change in the burden of proof to the disadvantage of the customer shall result from the above provisions.

13 Limitation Period

Any and all claims of the customer, regardless of the legal basis, shall expire, subject to sentence 2, in one year calculated from the time of the commencement of the statutory limitation period. In cases of applicable mandatory law the periods set out at law shall apply.

14 Confidentiality; Secrecy

The customer shall treat as confidential all information provided by NAF in connection with this contract and its performance. The customer is entitled to use such information only for the purposes set out in the contract. Obligations of confidentiality shall not apply to any information in relation to which the customer can prove that such was already generally known or where, without any infringement of the obligation of confidentiality by the customer, such became generally known or, where such information was already known to the customer at the time of receipt without any infringement of the duty of confidentiality or, where such information was lawfully received from a third party without any obligation of confidentiality or, where the customer, without using any information provided in relation to this contract, developed such information itself. The obligations set out under this section shall remain in force even after the ending of the contract regardless of the reasons for which the contract ended.

15 Making Available of Software; Software Use

15.1 Insofar as any software is contained in a delivery, the customer shall be granted a non-exclusive licence to use the delivered software including the documentation thereto. Such shall be provided for use in relation to the specific object of the delivery. Any use of the software on more than one system is not permitted.

15.2 The customer may copy, process, translate or transform the software from the object code to the source code only to the extent permitted by law. The customer undertakes not to remove any producer details – in particular copyright identification marks – or to change such without the prior written approval of NAF. All other rights to the software and the documentation including copies thereof shall remain with NAF or, as applicable, its software suppliers. Any right to grant sublicences is hereby excluded.

15.3 NAF shall examine the software before it is made available to the customer by way of current measures corresponding with the state of the art for computer viruses, Trojan horses, hoax viruses and comparable programming, program parts or malicious software which could result in a loss or falsification of data or programs or limitations to the system or parts thereof (hereinafter called „computer viruses“). Notwithstanding the above, neither the risk that the software contains unrecognised or mutated computer viruses nor the possibility that such could at a later time access a (operational or control) system of the customer and therefore possibly change or erase program data or software or other data or programs or limit systems can be excluded.

15.4 As a result of the above the customer shall also undertake measures to protect against computer viruses and other destructive data. Before using supplied software or opening any data the customer shall check such for computer viruses. This shall also apply to software which the customer wishes to use in its (operational or control) systems insofar as the functionality of the NAF system could be affected.

15.5 The customer shall protect against loss of data by computer viruses through an independent and regular backing up of data. In case of loss or manipulation of data NAF shall be liable in accordance with the provisions of section 9 only for those expenses which would have been necessary or which are necessary on the basis of the recovery of the direct data after due and proper data backups.

16 Jurisdiction; Applicable Material Law; Dispute Resolution Clause; Place of Performance; Requirement of Writing; Savings Clause; Non-Assignment of Contractual Rights by Customer

16.1 The exclusive place of jurisdiction for both parties shall be Nuremberg (Nuernberg).

16.2 The material law of Sweden shall apply to the exclusion of the referral regulations of Swedish International Private Law and UN-Sales Law as well as the Law concerning International Sales.

16.3 Disputes arising out of the legal relationship between the customer and NAF which cannot be settled by way of negotiations shall be dealt with according to arbitration proceedings under the respective latest procedural rules of the International Chamber of Commerce (ICC) and such shall form an integral part of the contractual relationship between the customer and NAF. The place of the arbitration tribunal shall be Nuremberg (Nuernberg).

16.4 Insofar as such is not agreed otherwise in individual cases, the place of performance shall be Neunkirchen am Brand.

16.5 Declarations which could lead to the establishing, maintenance or exercising of any rights must be in writing. This requirement of writing shall also be satisfied by way of text (Textform) communication of data (e.g. email) or telefax unless the law requires that such must be in writing.

16.6 Insofar as any provisions of these GDC are or become, in whole or in part, invalid or impracticable, this shall not affect the effectiveness and application of the remaining provisions. The parties shall attempt to replace any provision which is, in whole or in part, ineffective or impracticable by way of a new provision which most closely reflects the original interests. The same shall apply insofar as there is any unintended omission or failure to regulate any matter.

16.7 The customer shall not be entitled to assign any of its contractual rights to a third party without the written approval of NAF.

