

# Terms of Sale and Delivery per 15<sup>th</sup> February 2013 apply in accordance with German law

## 1. Validity of the Terms

We supply only to commercial customers.

Our offers, deliveries and service are effected on the basis of these terms of sale and delivery only. Thus, these terms will be valid for any future business relations, even if not agreed upon additionally. Hereby, we contradict counter-confirmations with regard to the purchase conditions of the buyer. Deviations from these terms of sale and delivery are valid only if we confirm them in writing.

## 2. Contents

Our offers are always without engagement, unless otherwise defined. Orders are binding for us in case we confirm them or deliver the goods ordered. Delivery dates or delivery times can be agreed upon binding or non-binding. The agreements must be made in writing. Unless otherwise agreed upon, delivery dates or times are non-binding. Time bargains are not transacted. Other verbal agreements or agreements over the phone to the contract are binding only in case of written confirmation by us.

## 3. Delivery

The delivery of goods is effected ex works Cologne. Delivery dates are kept if the dispatch of the goods is effected within the agreed delivery time or collected by the buyer. If the delivery is delayed due to reasons which are caused by the buyer, the agreed delivery time is still kept if the buyer is informed in writing about the readiness for dispatch in time

## 4. Default of Delivery

We shall make any effort to effect delivery as early as possible. If the buyer is in arrears with payment, if deliveries are delayed as a result of force majeure or due to incidents which hinder or prevent (make impossible) the delivery, our obligation to effect the delivery is suspended. These preventions may be especially labour disputes (strikes and lockouts), breakdowns in production, shortage of goods and raw materials and other unforeseeable production obstacles affecting ourselves, our suppliers or carriers ordered by us or our suppliers. In case of these events we can choose whether to withdraw from the contract or to lengthen the delivery time until the obstacle is removed. Compensation claims of the buyer due to not keeping within the time limit are excluded.

## 5. Dispatch

In principle, the dispatch will be effected ex works Cologne, without covering insurance, at the consignee's risk. If the buyer should require a transportation insurance, the costs will be borne by him. Deliveries with a net value above 250.-- € will be effected franco domicile resp. or German border in case of orders shipped to foreign countries. Seafreight consignments with a net value above 500.-- € will be shipped free German port or port of shipment plus FOB costs incurred. We reserve the right to choose the route and the mode of transport. Freight charges which increased after the contract has been concluded, any additional costs for diversion, warehousing etc., will be borne by the buyer. The same shall apply to any additional costs resulting from special shipping requests made by the buyer, e.g. express or airfreight.

## 6. Prices

Any order placed with us will be executed on the basis of the list prices valid on the date of delivery. The list prices are quoted net per kg prices, unless otherwise agreed. Should we increase prices generally within the time between concluding the contract and effecting delivery, the buyer has the right to cancel the contract within two weeks after announcement of the price increase. The offered prices are valid only for orders in the quoted standard packings. If quantities ordered are less than the given standard packing sizes, the appropriate surcharges for small packing will apply. We shall charge additionally necessary carton packing at cost price. Sea-/airworthy packing for air- or seafreight will be charged additionally. Should the buyer require dispatch by express or airfreight, additional costs will be charged, too. For net value orders below 100.-- €, we shall charge an additional 50.-- € as handling fee.

## **7. Terms of Payment**

Unless alternative terms have been agreed, our invoices are payable within 30 days from the date of invoice without any deduction, or payment within 10 days minus 2 % cash discount and have to be remitted to one of the indicated bank accounts and payable in Euro. For invoice amounts of less than 100.-- € no cash discount is granted. Incidental expenses will be debited to the buyer's account. In case of export to foreign countries, the charges incurring from the receipt of payment will be borne by the buyer if they occurred in the buyer's country. If the buyer does not meet the deadline for payment, we shall charge an interest rate according to the usual debit interest, but at least 5 % above the basic rate of interest of the European Central Bank, in foreign countries including losses on exchange parities, without having to give a special word of exhortation. We shall have the right to claim further damages due to delayed payment. Order acceptance or executing of orders may depend on a guarantee or advance payment. Compensation payments are permitted only if the counter claims are accepted by us and have become legally valid.

## **8. Guarantee and Formal Complaints**

The buyer has to test the delivered goods immediately upon receipt by trial application with regard to condition and application purpose, but not in the case if a trial application is unacceptable by exception. Complaints have to be submitted in writing 14 days after receipt of goods at the latest, otherwise the goods are considered to be accepted. Customary deviations in quantity may not be claimed.

In the event of complaints, the goods have to be returned to us immediately in their original condition and with original packing specifying the complaint, product and its batch number, if necessary. If the complaint is justified, we shall send additional quantities or exchange the goods against faultless material. If an exchange of goods is not possible or the replacement delivery defective, the buyer may choose either to return the goods or we shall grant a discount.

## **9. Liability**

Claims for damages against us – also on account of secondary damages, especially owing to delay or impossibility as well as the non-compliance of any contractual or pre-contractual subsidiary duties or obligations, positive breach of obligation, infringement of any third-party industrial property rights and/or unlawful act, are impossible, irrespective of the legal foundation, unless we have acted willfully or with gross negligence or the claim for damages is based on a granted property. A liability claim also exists if the breach of an obligation that is of essential importance to achieve the purpose of the contract has been executed negligently by one of our legal representatives or managing staff members. The extent of each claim for damage is limited to the foreseeable damage. In case of purchase business all claims for damages against us are barred by the statute of limitations after 6 months of delivery, unless the claim was based on unlawful acts. As far as our liability is excluded this shall also cover possible personal liability of our staff members, employees, agencies and assistants.

## **10. Reservation of Title**

We reserve the right that the goods delivered remain our property until receipt of payment of all existing and coming receivables resulting from the business relationship with the buyer. If the buyer links, processes or mixes the goods delivered with other products we shall become joint-owner of the new products. The percentage of our co-ownership is determined according to the ratio between the value of the goods delivered and the value of the new product.

A resale of the goods covered by the reservation of title is only possible with our express prior written consent. Provided we agree, all buyer's claims against third parties from the sale pass to us upon coming into existence in order to safeguard our existing and future claims against the buyer. We shall not redeem the assigned claim as long as the buyer pays his financial obligations. The buyer is, however, obliged to disclose the third party owner to us upon request and to make the assignment known to the former.

Buyer's claims against third parties from the resale of goods covered by the reservation of title must not be included in current invoices. If they are nevertheless included into current invoices the assignment shall comprise the current account balance. The buyer shall store the goods covered by the reservation of title free of charge for us and is obliged to insure them against fire, vandalism and water damage. The buyer herewith assigns all claims for compensation against the insurers to which he is entitled resulting from damage of the aforementioned types incurred to the goods covered by the reservation of title as well as possible other compensation claims to us. Upon the request the buyer will prove that he has taken out insurance and that the coverage will last until the end of the reservation of title by presenting corresponding documents to us.

We are obliged to release the securities acc. to the above mentioned terms upon request by the buyer if and as far the realisable value of securities exceeds 20 % of the secured claims.

### **11. Technical Advice, Application and Processing**

Our technical advice provided verbally, in writing or by trials is given to the best of our knowledge and belief but without any liability and shall also apply in case proprietary rights of third-parties are involved. This technical advice shall not release the buyer from the obligation to perform his own tests with the products supplied by us as to their suitability for the intended process and application. Application, utilization and processing of the products are beyond our control and therefore entirely the buyers's responsibility.

For new products, according to preliminary technical information sheets, adequate practical results are not always available which would permit a comprehensive assessment of such a product. Therefore, it is necessary to carefully test such products for the application intended.

### **12. Equal Treatment**

Mutual respect is fundamental to a cooperative business relationship. Discriminations on the basis of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation represent a breach of our code of conduct for a mutually cooperative relationship. All partners are obliged to honour the principles of a mutually cooperative relationship and in particular to respect the identity and dignity of each and every person.

### **13. Place of Fulfilment and Court of Jurisdiction**

Place of fulfillment and court of jurisdiction for both parties – as far as legally admissible – is Cologne with regard to rights and obligations indirectly or directly involved with the contract. The same shall be valid for actions with bill or cheque lawsuits if a different localization than Cologne is indicated on cheques and bills.

### **14. Applicable law**

German law applies.

### **15. Salvatory Clause**

If individual terms are or will become ineffective or if omissions arise out of the contract, this does not effect the effectiveness of the remaining contents of the contract. Any ineffective regulations shall then be replaced and omissions filled by regulations that approximate the intention of the contract as far as possible.

Cologne, 15<sup>th</sup> February 2013  
norettec GmbH & Co. KG