

General Terms and Conditions of Sale, Delivery and Assembly

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These General Terms and Conditions of Sale, Delivery and Assembly apply without exception to all business transactions of NCA Container und Anlagenbau GmbH (NCA, hereinafter the Seller).

These general delivery conditions are primarily intended for legal transactions between businesses. If, exceptionally, they are also applied to transactions with consumers within the meaning of section 1(1)(2) of the Consumer Protection Act, Federal Law Gazette 140/1979, they apply only insofar as they do not conflict with the provisions of Part One of that Act. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 96/1988, is expressly excluded.

1. Preamble

1.1. These General Delivery Conditions of NCA Container und Anlagenbau GmbH apply to all transactions between the Seller and the Buyer. Changes or deviations must be agreed in writing. Conditions between the Seller and the Buyer which conflict with or differ from these delivery conditions are excluded and not recognised unless the Seller acknowledges the application of individual provisions in writing. These delivery conditions also apply where the contractual relationship is performed without objection or reservation despite knowledge of conflicting or differing conditions of the Buyer.

1.2. These delivery conditions supplement contracts between the Seller and the Buyer. The Buyer agrees that, if it uses its own general terms and conditions, these delivery conditions of the Seller shall apply in cases of doubt, even if the Buyer's conditions remain unchallenged. Negotiations concerning contractual performance by the Seller do not constitute agreement to contractual conditions differing from these delivery conditions.

1.3. The following provisions on the delivery of goods apply correspondingly to services and assembly work.

1.4. All agreements between the Seller and the Buyer concerning performance of the contract must be concluded in writing.

1.5. These delivery conditions also apply to future transactions between the parties, even if their application to future transactions is not expressly agreed.

1.6. Correspondence with the Seller must be conducted exclusively with its sales department, quoting the order number. Agreements with other departments require express written confirmation by the Seller's sales department, in the form of an addendum to the agreement, to be legally effective.

1.7. The Buyer undertakes to keep the conclusion of the contract confidential. It may name the Seller as a reference to third parties only with the Seller's written consent.

1.8. The Seller makes these General Delivery Conditions the basis of the contract and declares that it enters into contractual relationships exclusively subject to these delivery conditions. It will not enter into a transaction without these delivery conditions or individual provisions thereof applying unless it expressly states otherwise in writing.

2. Conclusion of the contract

2.1. The contract is deemed concluded when the Seller has dispatched a written order confirmation after receiving the order.

2.2. Changes and additions to the contract require the Seller's written confirmation to be valid. The Buyer's purchasing conditions bind the Seller only if expressly acknowledged by the Seller.

2.3. If import or export licences, foreign exchange permits or similar authorisations are required to perform the contract, the Buyer must make every reasonable effort to obtain them in good time.

3. Product information

- 3.1. Details and information in price lists or product documentation become binding only insofar as the quotation or contract expressly refers to them in writing.
- 3.2. Drawings or technical documents relating to the works provided by one party to the other, before or after conclusion of the contract, remain the property of the party providing them.
- 3.3. Any exploitation, use, copying, reproduction, transfer or disclosure to third parties beyond the intended purpose requires the other party's consent.
- 3.4. The Seller shall provide, free of charge and no later than acceptance, information and drawings enabling the Buyer to commission, use and maintain the works. One copy of each shall be supplied unless otherwise agreed in the contract. The Seller is not obliged to provide workshop drawings for the works, the supplied item or spare parts.

4. Packaging

- 4.1. Unless otherwise agreed in writing, prices always exclude packaging. Packaging shall be customary for the trade and designed to prevent damage to the goods under normal transport conditions on the way to the specified destination. The Buyer bears packaging costs.

5. Transfer of risk

- 5.1. Unless the contract contains an express delivery clause, delivery shall be ex works (EXW), with the goods ready for collection.
- 5.2. Risk of loss of or damage to the supplied item passes when the goods are handed over to the shipping company.
- 5.3. Any risk of loss of or damage to the supplied item not covered by clauses 5.1 or 5.2 passes to the ordering party upon acceptance of the works.
- 5.4. After risk has passed, the Buyer bears the risk of loss of or damage to the supplied item unless damage results from intentional misconduct or gross negligence by the Seller.

6. Acceptance

- 6.1. After completion of the supplied item, an acceptance test to establish compliance with the contractual acceptance requirements shall be carried out only if the parties have agreed this in writing.
- 6.2. The Buyer may not use the works or any part thereof before acceptance. If the Buyer nevertheless uses them, they are deemed accepted. No further acceptance test shall then be carried out.
- 6.3. Where the parties have agreed an acceptance test, the Seller shall notify the Buyer in writing that the works or supplied item are ready for acceptance and specify a test date. The date shall allow the Buyer sufficient time to prepare and, if appropriate, arrange representation. Testing shall take place during normal working hours at the place of manufacture or another location specified by the Seller.
- 6.4. The Buyer pays the acceptance testing costs, excluding costs incurred for the Seller's personnel or representatives.
- 6.5. At its own expense, the Buyer shall provide all materials and aids necessary for acceptance testing. The Buyer shall also make the necessary arrangements, install equipment and provide the required personnel and other resources.
- 6.6. Acceptance testing is deemed to have taken place on the scheduled date if the Buyer prevents it or fails to meet its obligations under clause 6.5.
- 6.7. After acceptance testing, the Seller shall prepare and send the Buyer a test report. If the Buyer does not attend or arrange representation, or prevents testing, the accuracy of the acceptance report can no longer be disputed.

- 6.8. If acceptance testing reveals non-conforming workmanship, the Seller shall remedy each defect within a reasonable time. The Buyer may request in writing a further acceptance test under clause 6.3, except in the case of minor or insignificant defects.
- 6.9. The works are deemed accepted upon successful completion of acceptance testing. Acceptance is also deemed successful if the Buyer fails to attend or arrange representation at the test date under clause 6.6, or otherwise prevents testing.
- 6.10. If the parties have not agreed acceptance testing, the works are deemed accepted when the Buyer receives the Seller's written notice of completion.
- 6.11. Minor or insignificant defects which do not impair the performance of the supplied item or works do not justify refusal of acceptance.
- 6.12. Acceptance of the supplied item or works starts a one-year period during which the Seller is liable for defects. This period is shortened if use exceeds the agreed scope. If acceptance is delayed for reasons not attributable to the Seller, liability for defects ends no later than 18 months after delivery unless otherwise agreed in writing.

7. Delivery period

- 7.1. Unless otherwise agreed in writing, the delivery period begins on the latest of the following dates: (a) the order confirmation date; (b) the date on which all technical, commercial and financial requirements incumbent on the Buyer under the agreement have been met; (c) the date on which the Seller receives an advance payment due before delivery and/or a required payment security has been established.
- 7.2. The Seller may make partial and early deliveries.
- 7.3. If the Seller foresees that it cannot meet the delivery or acceptance deadline, it must promptly notify the Buyer in writing, state the reasons for the delay and indicate the expected acceptance date.
- 7.4. The Seller is entitled to a reasonable extension of the acceptance deadline if a delay results from force majeure; alteration work, including changes required by legislation or regulations; changes requested by the Buyer; the Buyer's failure to fulfil contractual obligations, particularly payment or cooperation obligations; or another reason attributable to the Buyer.
- 7.5. If the Seller is responsible for the delay, the Buyer may either demand performance or, after setting a reasonable additional period, withdraw in respect of the part of the works which cannot be used as intended owing to the manufacturer's delay.
- 7.6. If the additional period under clauses 7.4 or 7.5 expires unused through the Seller's fault, the Buyer may withdraw by written notice in respect of all goods or parts not yet delivered. This also applies to goods or parts already delivered which cannot reasonably be used without those still outstanding.
- 7.7. If the Buyer has not made the contractually required payment or other performance by expiry of the delivery period or additional period, the Seller may withdraw by written notice. At the Seller's request, the Buyer must return goods already delivered at its own cost and risk, compensate for any reduction in their value, and reimburse all justified expenditure incurred by the Seller in performing the contract, particularly for goods already completed or partly manufactured but not yet delivered.

8. Retention of title

- 8.1. The supplied item remains the Seller's property until the Buyer has fully discharged all contractually agreed financial obligations.
- 8.2. The Seller may visibly mark its ownership of the supplied item.
- 8.3. At the Seller's request, the Buyer shall provide full assistance in efforts to protect the manufacturer's ownership of the supplied item.
- 8.4. In the event of seizure or other third-party claims, the Buyer must take measures to preserve the Seller's ownership, particularly by pointing out that ownership and notifying the Seller immediately.

8.5. In justified cases, particularly the Buyer's payment default, justified doubts about its creditworthiness or the recoverability of the purchase price, or an application for or actual opening of insolvency, restructuring or equivalent proceedings, the Seller may enforce the agreed retention of title in accordance with contractual and statutory provisions. This includes prohibiting further processing, combination, mixing, commingling or resale of supplies or ownership/co-ownership interests subject to retention of title; recovering them at the Buyer's cost and risk; entering the Buyer's premises if necessary for that purpose; and collecting resale receivables itself and realising them towards payment.

9. Price

9.1. Unless otherwise agreed, prices are ex the Seller's works and exclude loading, packaging, shipping and, in particular, assembly.

10. Payment

10.1. Unless otherwise agreed, payment shall be made within 30 days of invoicing, with one third of the price payable on conclusion of the contract, one third when the Seller notifies the Buyer that the supplied item or its substantial part is ready for dispatch, and one third when the supplied item arrives at the recipient's location.

10.2. The place of payment is the Seller's registered office.

10.3. The Buyer may not withhold payments because of warranty claims or defects. Set-off against counterclaims is also excluded unless the claims are acknowledged by the Seller or established by a court.

10.4. In the event of the Buyer's payment default, the Seller may charge default interest from the due date at 9.2 percentage points above the European Central Bank's marginal lending facility rate, and recovery costs of 1% of the amount on which default interest is due.

10.5. If the Buyer defaults on payment or fails to provide security on time, the Seller may, after written notice to the Buyer, withhold performance of its own contractual obligations until payment is received or security provided.

10.6. If payment is more than three months overdue, the Seller may withdraw from the contract, demand interest and reimbursement of recovery costs under clause 10.4, and claim damages.

10.7. If the conditions for initiating insolvency proceedings against the Buyer's assets are met, the Seller is released from any obligation of further contractual performance and warranty, and may choose to withdraw from further performance or from the entire contract. The same applies to judicial or extrajudicial composition, reorganisation and similar proceedings.

11. Assembly

11.1. If assembly of the supplied item is expressly agreed in the contract, the Seller shall provide the drawings and, where applicable, instructions required for assembly.

11.2. The Buyer must carry out preparatory work in good time to ensure that the conditions necessary for assembly and proper use of the supplied item are met.

11.3. Where applicable, the Buyer must carry out the preparatory work in accordance with the Seller's drawings and instructions.

11.4. The Buyer must ensure that the Seller's personnel can begin and perform assembly work according to the agreed schedule. Assembly work shall be performed during the Seller's normal working hours.

11.5. Before work begins, the Buyer must inform the Seller in writing of all relevant safety regulations applicable at the assembly site and ensure the necessary safety by taking protective measures.

11.6. Accommodation and meals must be provided for the Seller's personnel at the Buyer's expense for the duration of assembly, close to the assembly site and no more than 20 km away.

11.7. The Buyer shall provide free of charge all facilities, machines, tools and other items required for assembly which the Seller specifies at least one month before assembly begins.

- 11.8. Suitable office premises at the assembly site shall also be provided to the Seller free of charge, equipped at least with telephone and internet connections.
- 11.9. At the Seller's request, the Buyer shall provide an appropriate number of assistants and personnel for assembly work free of charge.
- 11.10. The Buyer shall assist the Seller free of charge with importing and exporting the Seller's equipment, tools and similar items, particularly customs formalities.
- 11.11. Each party shall designate a responsible, authorised representative with power to act who remains available at or near the assembly site throughout the assembly work.
- 11.12. If the Buyer cannot fulfil its obligations under clause 11, or cannot do so on time, it must notify the Seller immediately.
- 11.13. If the Buyer fails to fulfil its obligations under clause 11 in whole or in part, the Seller may, at its discretion and at the Buyer's expense, fulfil them itself or arrange for them to be fulfilled. Alternatively, the Seller may suspend its own performance obligations wholly or partly once a reasonable period previously granted to the Buyer to fulfil its obligations has expired.
- 11.14. The Seller shall be compensated for additional costs arising from delays attributable to the Buyer. The Seller may also charge reasonable additional costs for work performed on Sundays, public holidays or outside its normal business hours.
- 11.15. Upon completion of assembly, any assembly obligation and acceptance of the works shall be deemed fulfilled.

12. Warranty and liability

- 12.1. The Seller warrants that the works are free of defects at the time of acceptance.
- 12.2. It is liable for defects in the works attributable to errors in design, materials or workmanship.
- 12.3. The Seller is liable only for defects arising under the contractually specified operating conditions and with proper use of the supplied item or works.
- 12.4. No liability exists for defects attributable to materials supplied by the Buyer or a design prescribed or specified in detail by the ordering party.
- 12.5. The Seller is not liable for defects resulting from circumstances arising after transfer of risk, such as poor maintenance, inadequate repairs by the Buyer, or changes made without the Seller's written consent. The Seller likewise accepts no liability for normal wear or deterioration.
- 12.6. Liability for defects under clause 12.2 is limited to defects arising within one year of acceptance; this period is reduced appropriately if use exceeds the agreed scope. If acceptance is delayed for reasons attributable to the Buyer, the Seller's liability for defects ends no later than 18 months after delivery.
- 12.7. The Buyer may rely on clause 12 only if it promptly reports any defects to the Seller in writing. The presumption under section 924 of the Austrian Civil Code (ABGB) is excluded.
- 12.8. Notice of a defect must be given to the Seller in writing within two weeks of the defect becoming known, with a detailed description. If the Buyer does not give notice in accordance with this provision, it loses its warranty rights.
- 12.9. If a defect could cause damage, the Seller must be notified immediately in writing. The Buyer bears the risk of damage resulting from failure to provide this information. The Buyer must take reasonable precautions and measures to mitigate damage and, where applicable, follow the Seller's instructions.
- 12.10. Where notified under clause 12.7 and defects can be remedied, the Seller must, at its option: (a) repair the defective goods on site; (b) have the defective goods or parts returned and repair them; or (c) replace the defective parts or goods.
- 12.11. Return shipment to the Seller is at the Seller's cost and risk. Return shipment of the repaired or replaced supplied item is at the Buyer's cost and risk.

- 12.12. Where defective parts or goods are replaced, the Buyer must return the defective parts or goods to the Seller at its own risk and expense. In all cases, they become the Seller's property upon receipt.
- 12.13. Repairs or remedies carried out by the Buyer itself require the Seller's written consent; otherwise, the Buyer loses all warranty or remedial rights. The Buyer bears the costs of self-remedy in every case.
- 12.14. The Seller also has no warranty obligation for defects arising under normal use in compliance with operating conditions, or for ordinary wear. In particular, there is no warranty obligation for defects resulting from improper upkeep or maintenance, or from repairs or changes carried out by anyone other than the Seller.
- 12.15. For parts obtained by the Seller from a subcontractor prescribed by the Buyer, the Seller is liable only to the extent of its own warranty claims against that subcontractor.
- 12.16. If a defect is repaired on site, the Buyer must, at its own expense, provide access to the works and arrange any necessary intervention in equipment not forming part of the works.
- 12.17. If the Buyer reports a defect but no defect can be established, the Buyer must reimburse all costs and expenses incurred by the Seller as a result of the complaint.
- 12.18. If repair fails, the Buyer may demand a reduction in the contract price corresponding to the reduced value of the works, capped at 15% of the contract price. In such a case, the Buyer may alternatively withdraw by written notice in respect of the part of the works which cannot be used as intended because of the defect. The Buyer is then entitled to compensation for its loss up to a maximum of 15% of the portion of the contract price attributable to the part of the works for which the contract has been terminated.
- 12.19. The Seller's liability for defects in any part of the works is limited to two years from acceptance, or no later than two years from delivery or any assembly.
- 12.20. The Seller accepts no liability for damage caused by a defect, such as production losses, lost profit, loss of use, loss of contracts or similar indirect or consequential losses.
- 12.21. There is no liability for property damage caused by the works after acceptance or delivery. The Buyer shall fully indemnify and hold the Seller harmless against third-party damages claims relating to damage attributable to products manufactured by the Buyer or falling within the Buyer's sphere of responsibility.
- 12.22. In cases of slight negligence, any claim for damages is limited to 5% of the order value, subject to an absolute maximum of EUR 100,000.
- 12.23. If a third party makes damages claims against the Buyer which may give rise to the Seller's liability, the Buyer must notify the Seller immediately.
- 12.24. In cases of force majeure, either party may suspend its contractual obligations to the extent that the event makes performance impossible or disproportionately difficult. Force majeure includes labour disputes, war, fire, restrictions on energy requirements, export and foreign exchange restrictions, epidemics and pandemics, natural disasters, extreme natural events, terrorist acts, and defective or delayed subcontractor deliveries caused by such circumstances.
- 12.25. A party invoking force majeure must immediately notify the other party in writing of the occurrence and expected end of the event. If it fails to do so, the other party may demand reimbursement of all additional costs resulting from that failure.
- 12.26. If force majeure prevents the Buyer from fulfilling its contractual obligations, the Buyer must reimburse the Seller for costs incurred in securing and protecting the works.
- 12.27. If the circumstances under clause 12.24 continue for more than six months, the other party may withdraw by written notice to the other party.
- 12.28. Notwithstanding the provisions of clause 12, the Seller may suspend performance of its contractual duties if the circumstances indicate that the Buyer will not fulfil its obligations. In this case, the Seller must notify the Buyer immediately in writing.

13. Miscellaneous, disputes and applicable law

13.1. If any provision of these delivery conditions is invalid, only that provision shall be invalid; the validity of the remaining provisions remains unaffected. In place of an invalid provision, a lawful provision coming as close as possible to it shall be deemed agreed.

13.2. Unless otherwise agreed in writing between the parties, all disputes arising directly or indirectly from the contract fall within the jurisdiction of the Austrian court having territorial and subject-matter jurisdiction for the Seller's registered office.

13.3. Austrian law applies, excluding the United Nations Convention on Contracts for the International Sale of Goods in its applicable version.