



## **General Business Terms n&g Metrology GmbH**

### **§1 Scope**

(1) These terms of sale shall apply exclusively towards entrepreneurs, legal entities under public law or separate assets under public law within the meaning of § 310 Par. 1 BGB [German Civil Code]. We shall only recognise opposing terms and conditions of the orderer or terms and conditions which deviate from our terms of sale if we explicitly approve the validity in writing.

(2) These terms of sale shall also apply to all future business with the orderer insofar as it concerns legal transactions of a related type.

### **§ 2 Offer and conclusion of the contract**

Insofar as an order is to be seen as an offer according to § 145 BGB we can accept this within two weeks. The offer is accepted if it is confirmed in writing.

### **§ 3 Documents which are handed over**

We reserve property rights and copyrights to all documents handed over to the orderer in connection with the placement of the order, such as e.g. calculations, drawings etc. These documents may not be made accessible to third parties unless we grant our explicit written consent to the orderer in this respect. Insofar as we do not accept the orderer's offer within the deadline of § 2 these documents are to be returned to us immediately.

### **§ 4 Prices and payment**

(1) Insofar as not otherwise agreed in writing our prices shall apply ex works excluding packaging and plus value added tax in the respective applicable amount. Costs for the packaging are invoiced separately.

(2) The payment of the purchase price has to be made exclusively onto the account stated by us. The deduction of cash discount is only permitted in case of a special written agreement.

(3) Insofar as not otherwise agreed the purchase price is to be paid within 10 days after pick-up at n&g Metrology GmbH. Interest on default will be charged in the amount of 8 % above the respective base lending rate p.a. The right is explicitly reserved to assert higher damages on default.

(4) Insofar as no fixed price agreement was reached, we reserve the right to make reasonable price changes owing to changed wage, material and sales costs for deliveries which are only made 3 months after conclusion of the contract or at a later date.

### **§ 5 Offsetting and rights of retention**

The orderer is only entitled to the right to offset if its counter-claims have been determined final and binding or are undisputed. The orderer is only entitled to exercise a right of retention to the extent that its counter-claim is due to the same contractual relationship and the counter-claim has been recognised or determined final and binding.

### **§ 6 Delivery time**

(1) The delivery is only binding if it is explicitly confirmed by us.

(2) The start of the delivery time confirmed by us presumes the timely and proper satisfaction of the orderer's obligations. The right is reserved to the plea of an incomplete contract remains.

(3) If the orderer is in default of acceptance or if it culpably breaches other duties to provide assistance then we are entitled to request compensation for the damages accordingly suffered by us including possible additional expenses. The right is reserved to assert further claims. Insofar as the aforementioned pre-requisites exist the risk of an accidental loss or an accidental deterioration of the object of purchase shall pass to the orderer at the time at which it has become in default with the acceptance or as debtor.

(4) In case of delay in delivery not caused by wilful intent or gross negligence we shall be liable as a maximum in the amount of 3% of the delivery value, with other damages not caused by wilful intent a maximum in the amount of 15% of the delivery value.

### **§ 7 Passing of risk in case of shipment**

n & g Metrology GmbH makes the goods available for pick-up by the orderer on the ramp in the plant. If the goods are sent to the orderer or a third party at its request then the risk of the accidental loss or the accidental deterioration of the goods shall pass to the orderer with the shipment to the orderer /third party, by no later than when they leave the plant. This applies irrespective of whether the goods are shipped from the place of performance or who bears the freight costs.



#### **§ 8 Reservation of title**

(1) We reserve the right to the property to the delivered object until the full payment of the purchase price and all claims from the supply contract and from all past, existing and future business transactions with the buyer. This shall also apply to all future deliveries, even if we do not always explicitly refer hereto. We are entitled to take the object of purchase back if the orderer behaves in breach of the contract

(2) As long as the property has not yet passed to it the orderer undertakes to treat the object of purchase with due care and attention. It is in particular obliged to sufficiently insure these at its own costs against theft, fire and water damages at the value as new (reference: only permitted with the sale of higher quality goods). If service and inspection work have to be carried out the orderer has to carry these out in time at its own costs. As long as the property has not yet passed the orderer has to inform us immediately in writing if the delivered object has been attached or is exposed to other interventions of third parties. Insofar as the third party is not in the position to reimburse us the in court and out-of-court costs of a successful action according to § 771 ZPO [Code of Civil Procedure] the orderer shall be liable for the loss incurred to us.

(3) The orderer is entitled to the resale of the reserved goods in normal business transactions. The orderer hereby now already assigns the receivables of the buyer from the resale of the reserved goods to us in the amount of the final invoice amount agreed with us including value added tax. This assignment shall apply irrespective of whether the object of purchase has been resold with or after processing. The orderer shall also remain authorized to collect the receivable after the assignment. Our authorization to collect the receivable ourselves remains unaffected hereby. We will however not collect the receivable as long as the orderer satisfies its payment obligations from the collect proceeds, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or payments have been suspended.

(4) The processing or conversion of the object of purchase by the orderer is always carried out in the name of and by order for us. In this case the expectant right of the orderer to the object of purchase is continued with the converted object. Insofar as the object of purchase is processed with other objects not belonging to us we shall acquire the co-ownership to the new object in the ratio of the objective value of our object of purchase to the other processed objects at the time of the processing. In order to secure our receivables due from the orderer the orderer shall also assign such receivables to us to which it is entitled against a third party through the connection of the reserved goods with a property. N&G Metrology GmbH hereby now already accepts this assignment.

(5) We undertake to release the collateral to which we are entitled at the orderer's request insofar as their value exceeds the receivables which are to be secured by more than 20 %.

#### **§ 9 Warranty and report of defects as well as recourse /manufacturer's recourse**

(1) The parties are principally aware that n & g Metrology GmbH sells used machines. The machines are overhauled from a technical point of view according to the current status of knowledge of the seller and sold in this condition. The condition of the sold machine is recognised as per contract. Warranty rights of the orderer presume that it has satisfied its responsibilities for examination and complaint owed according to § 377 HGB.

(2) Claims for defects shall become statute-barred in 6 months after the risk has passed of the goods delivered by us. The afore-mentioned provisions shall not apply insofar as the law stipulates longer deadlines as mandatory. Our consent and instructions are to be obtained before a possible return of the goods.

(3) Should the delivered goods feature a defect despite all applied care and attention, which existed already at the time when the risk was passed then we shall subsequently improve the goods or deliver replacement goods of our choice subject to the timely report of a defect. We are always to be given opportunity to the subsequent satisfaction within a reasonable period of notice. Claims for recourse remain unaffected by the aforementioned regulation without restriction.

(4) If the subsequent performance fails, the orderer can – irrespective of possible claims for damages – cancel the contract or reduce the remuneration.

(5) Claims for defects do not exist with an only insignificant deviation from the agreed condition, with an only insignificant impairment to the usability, with natural wear and tear or wear and tear as with damages, which are suffered after the passing of risk as a result of faulty or negligent treatment, excessive use, unsuitable operating means, faulty construction work, unsuitable building foundation or owing to special external influences, which are not presumed according to the contract. If improper repair work or changes are made by the orderer or third parties then no claims for defects will exist for these and the ensuing consequences either.

(6) Claims of the orderer owing to the expenses which are necessary for the purpose of the subsequent performance, in particular transport, route, labour and material costs, are excluded insofar as the expenses are increased, because the goods delivered by us have subsequently been taken to another location than the branch of the orderer unless the transport corresponds with the use as intended.

(7) Claims for recourse of the orderer shall only exist against us to the extent that the orderer has not reached any agreements with its buyers beyond the essential statutory claims for defects. Par. 6 shall further apply accordingly to the scope of the claim for recourse of the orderer against the supplier.



**§ 10 Miscellaneous**

(1) This contract and the entire legal relations of the parties are subject to the law of the Federal Republic of Germany under the exclusion of the UN Convention on the International Sale of Goods (CISG).

(2) The place of performance is our registered seat, exclusive place of jurisdiction for all disputes from this contract is Karlsruhe.

(3) All agreements, which have been reached between the parties for the purpose of executing this contract, are recorded in writing.

(4) Should individual provisions of this contract be or become invalid or a loophole be determined then this shall have no effect on the other provisions. The regulation which is permitted by law will be inserted to replace the invalid regulation, which shall as far as possible correspond with the financial purpose of the invalid regulation or fill this loophole.

(5) These terms and conditions shall apply until the full processing of the business relationship.

Karlsruhe, 06.10.2011