

General Terms and Conditions of Sale and Supply of Nussbaum Matzingen AG and Nussbaum Kesswil AG

A. General, scope and conclusion of contracts

1. We supply subject to our Terms and Conditions of Sale, Payment and Supply set out below, even in the event that reference is no longer expressly made at a later date during ongoing business relations. Any terms and conditions of business of the customer with contrary effect shall have no validity for us unless we have expressly agreed to them in writing.
2. Our offers are subject to confirmation and information relating to products, services or prices may be changed by us at any time unless expressly designated as mandatory. Orders shall only be deemed to have been accepted following written confirmation by us. Our order confirmation shall be decisive in establishing the content of the order.

B. Supply and acceptance

1. The agreed delivery period shall only commence upon presentation of the documents and clearance to be procured by the customer. Force majeure occurrences shall release us from the obligation to deliver. Delays to delivery resulting from unforeseeable circumstances outside our control such as operational disruptions, strikes, difficulties in procuring raw materials, official requirements etc. shall not give rise to default on our part. The delivery period agreed upon shall be extended by the duration of the impediment in addition to a further reasonable period.
2. The delivery period shall be deemed to have been complied with if the item to be delivered left the factory or was reported as being ready for dispatch prior to expiry. Part deliveries shall be permitted. Enjoyment and risk shall transfer to the customer at the time the goods are handed over to the freight forwarder. If the customer is late in accepting the goods, we shall be entitled – without prejudice to our other claims – to dispose of the goods at the cost of the customer after 90 days.
3. The costs of shipment shall be borne by the customer unless agreed otherwise in writing.
4. If damage is caused to the customer owing to a delay for which we were responsible, the customer shall be entitled to claim damages. The amount of damages shall be limited to 0.5% of the net price of the (partial) delivery concerned for each completed week of delay – subject however to a maximum limit of 5% of the net price of the (partial) delivery concerned. The foregoing shall be without prejudice to our liability under section H, paragraph 2 of our Terms and Conditions of Sale.

C. Prices, payment terms

1. Our prices do not include VAT and are quoted *ex works*. They do not include packaging, freight, customs charges, insurance and the like. For national sales, the prices agreed shall be subject to value added tax at the relevant statutory rate. Prices for foreign sales shall be those agreed upon or stated in the order. If agreed, we may adjust prices in line with changes in cost factors (so-called "price escalation clause").
2. Our invoices shall be paid at the latest within 30 days of the date of the invoice without any deduction. Thereafter, the customer shall be deemed to have defaulted on payment without any requirement for a further reminder and shall be obliged to pay default interest from the time of payment default. The default interest rate shall be equivalent to the current LIBOR CHF 3-month interest rate increased by 9%. In the event of payment default we shall also be entitled to suspend further performance, to render it conditional upon advance payment by the customer or to decide not to effect further performance.
In the event that payments are made through third parties, including in particular under the terms of *del credere* agreements, the goods shall only be deemed to have been paid for upon receipt of payment by us.
3. The customer shall not be entitled to exercise a right of retention in respect of any claims against us or to offset such claims, unless they have been expressly recognised by us or established with legally binding effect.

D. Reservation of title

1. The goods delivered shall remain under our ownership until settlement in full of all of our claims under the entire business relationship with the customer (goods subject to reservation of title). If an open account is kept, the reservation of title shall secure our claim to the balance. Special tools of all kinds, designs and matrices, a pro rata share of which has been charged to the customer, shall remain our property.
2. The customer shall be entitled to sell the goods owned by us during the ordinary course of business, provided that it has not defaulted on payment. In the event of onward sale, we are hereby assigned the claim resulting from the corresponding legal transaction in the amount of our invoice value. We hereby accept the declaration of assignment.
3. Without prejudice to our authority to collect, the customer shall be revocably entitled to collect amounts due to us during the ordinary course of business in its own name, provided that none of our claims is overdue, owing in particular to payment default, a suspension of payments, an application seeking the initiation of insolvency procedures or any other deterioration in the asset position of the customer.
4. Our right to exercise the retention of title or to enforce a pledge relating to an item delivered by us shall not be construed as withdrawal from the contract.
5. We undertake to waive our rights over the collateral vested in us insofar as its value exceeds the claims to be secured by more than 20%.

E. Warranty and reporting of defects

1. The customer shall carefully examine the goods promptly upon receipt and give written notice of any defects thereby ascertained relating either to the quantity or the quality of the goods delivered as quickly as possible. A sample of the goods must be included along with the claim.
The time barring period (time limit for bringing an action) for all warranty claims of the customer and all claims to damages and reimbursement of expenses shall extend to one year after receipt of the goods.
2. The supply of items affected by negligible deficiencies or negligible differences with regard to quantity or the agreed quality shall be permitted. The tolerance for rejection is 1%. In the event that faulty goods are supplied, if a substantiated claim is filed within the applicable time limits, we shall be entitled to choose between the supply of a fault-free replacement, subject to the return of the faulty goods, or the payment of compensation for the reduced value.

F. Responsibility of the customer

The customer shall bear responsibility for the data and film provided by it, compliance with duties relating to statutory declarations, compliance with third party industrial property rights and the fitness of the filling material for the quality of goods chosen by the customer. The customer shall be informed of the proof promptly and shall issue its approval for printing. If the customer is not present at the proof printing, any objections raised at a later date may no longer be taken into account.

G. Industrial property rights and copyright

1. Our customer shall bear sole liability in the event that any third party rights are infringed by implementation of its order, including in particular copyright or rights relating to designs, trade marks, patents, etc. Our customer shall hold us harmless from all third party claims relating to any breach of the law, and shall pay a corresponding settlement payment inclusive of all costs and interest incurred no later than two weeks after notice from us regarding the reason and amount of the third party's claim. In addition, in such an eventuality we shall be entitled to discontinue further work.
2. The rights over drafts, designs, samples etc. shall remain exclusively with the holder of the relevant right.

H. Liability

1. The customer shall have no entitlement to bring damages claims resulting under contract or from a positive breach of obligations, *culpa in contrahendo* or tort – including in particular in respect of consequential loss.
2. The foregoing shall be without prejudice to our liability for claims under the Swiss Product Liability Act for warranted characteristics and in other situations in which wilful action or gross negligence is ascribed to us. In the event that we act negligently, our liability shall be limited to foreseeable, typical damage.

I. Place of performance, jurisdiction and applicable law

1. The place of performance and jurisdiction shall be the relevant registered office of whichever of our two companies with which the customer has entered into contractual relations. However, we shall be entitled to initiate action against the customer before the court with jurisdiction over its registered office. Swiss law shall apply (including to cross-border transactions), with the exception of the UN Convention on the International Sale of Goods and Swiss private international law.
2. Our General Terms and Conditions of Business have been drafted in German, English and French. In the event of any discrepancies the German version shall prevail.
3. The full or partial invalidity of any individual provisions of the contract concluded with our customer or of these General Terms and Conditions of Business shall not affect the validity of the remaining terms.