

1. General Regulations

Our following General Terms and Conditions ("GTC") shall apply for the contractual relationship with merchants in the scope of their business activity and with legal persons under public law including special funds under public law. Our deliveries, performances and offers are exclusively based on these GTC. They shall therefore apply for future business relationships. These GTC deem to be accepted at the latest upon receipt of our products or performances. Any differing general terms and conditions of the contractual partners are opposed. This shall also apply if the business partner refers to his general terms and conditions or purchase conditions by means of a counter-confirmation or in any other way. Any conditions or terms differing from our GTC shall only become effective if confirmed by Nagase in writing. These Terms and Conditions replace all former GTC.

2. Offers

Our offers are subject to change without notice. The offers shall be treated confidentially and may only be disclosed to persons in charge.

3. Copyright / Technical Documents

All plans, drafts, scheme (diagrams) respectively connection-scheme (connection-diagrams), cost estimates and other technical documents remain property of Nagase. They may not be reproduced, copied or otherwise be disclosed to a third party or be used in order to manufacture products or its components. When there is no contract concluded after the offer was made, the documents must be given back to Nagase.

4. Orders and Confirmations

Orders become legally effective only after confirmation by Nagase in writing. The acceptance and the implementation may be subject to a security deposit or a payment in advance.

5. Quality, Sample, Analysis

Our samples are non binding initial samples and subject to alternation without prior notice. We do not give any guaranty that the delivered products correspond absolutely to the initial samples. Our statements concerning the quality and analysis should be considered as approximate values. The same shall apply for highest and lowest limits, unless we give a guaranty for certain characteristics of the products in a confirmed specification. Special customized fabrications which might be necessary and differ from the standard fabrication are considered as performance of the contract with appropriate price adjustment.

6. Prices

Prices on the Nagase-pricelist or on any other documentation are subject to alternation without prior notice. Unless stated different in the price offer, the prices are stated in Euro, net and ex works. Costs for package, freight and insurance as well as value-added tax will be added to the price. Nagase explicitly reserves the right to adjust the prices of the offers or order confirmations at any time due to risen production costs. The amount of the invoice shall be paid in the stated currency. Carriage free or duty free prices do not oblige us not to submit duty and freight costs.

7. Terms of Payment

Unless stated different in the price offer or any further agreement, the payment of the invoice has to be carried out without any deduction within 30 days after the invoice date. Even if warranty claims or counter claims are asserted, only if the counter-claim is non-controversial or has become res judicata, the customer is entitled to assert claims based on a setoff, retention and price reduction. However, the customer is not entitled to the retention even if a counter-claim arising from the same contractual relationship. If payments are deferred or if the customer is in default, Nagase is entitled to demand, apart from the purchase price, interest payment corresponding to an interest rate of 8% p.a. over the corresponding basic interest rate. Nagase may also hold the customer responsible for the damage arising from the default, especially for exchange rate losses. Cheques and bills of exchange shall be accepted on account of payment but not in lieu of payment. We are not obliged to accept these.

8. Retention of Title

Nagase reserves the property in all goods delivered until the customer has paid and / or settled all accounts receivable arising from the business relationship and all payments in cheques and bills of exchange are redeemed. The same shall apply for the property of new goods created by processing. The customer may resell the conditional commodities only if he assigns all his claims to the supplier now that arise out of the resale towards the buyer or another third party. When conditional commodities are resold before or after processing or connection with other objects that are in exclusive property of the customer, the customer assigns the claims to the supplier already now that arise from the resale for the full amount. If the customer resells conditional commodities after processing or connection with products that do not belong to the customer, the customer assigns already now all the claims to the supplier which arise from the resale in amount of the value of the conditional commodity with all secondary rights and the priority he has before the rest. The supplier accepts the assignment. The customer is entitled to collect the accounts receivable even after the transfer. The right of the supplier to collect the accounts receivable himself is not affected hereby, the supplier however undertakes not to collect the accounts receivable as long as the customer ordinarily fulfils his payment obligations and other obligation. The supplier can demand the customer to inform the supplier about the assigned accounts receivable and the debtors as well as to provide all information needed for their collection and to surrender all necessary documents as well as to notice the debtors about the assignment.

9. Guaranty, Warranty and Liability

- a) All those parts from which it turns out within 24 months from delivery that they are of no use or their merchantability is substantially impaired due to circumstances before the risk has passed, especially due to a defective type of construction, poor construction material or defective manufacturing are to be repaired or to be replaced by new delivery without further charge according to the choice to be made by the supplier according to his discretion. The customer must immediately inform the supplier in writing about such a defect. Visible defects have to be given notice of within 8 days after receipt of the goods. Section 377 of the German Commercial Code shall apply for the obligation of the customer to investigate and to give notice of a defect. Replaced parts shall become the property of the supplier. If it is not possible to remedy a defect or to deliver a substitute or fulfillment has not succeeded, the customer is entitled to rescind the contract or to reduce the purchase price or to demand the compensation of the damage. The compensation of damage is limited to those cases in which the defect has been caused by the intentional or gross negligent behaviour of the supplier or persons employed by the supplier in the performance of his obligation (Erfüllungsgehilfen) or vicarious agents. Claims arising from a consequential harm caused by a defect are excluded. The claims arising out of a guaranty for certain characteristics, especially those which are to protect the purchaser/ customer against the risk of consequential harm caused by a defect are not affected hereby. The liability for damages arising out of an injury of life, body or health due to defects remains unaffected.
- b) If the delivery delays without the supplier being responsible for it, then the liability lapses at the latest in 24 months after the risk has passed to the customer.
- c) The right of the customer to assert claims due to defects is subject to a limitation period of 24 months in all cases from the day of the timely notification of a defect, however, at the earliest with the expiry of the warranty period.
- d) The customer has to give the supplier the necessary time and occasion for all repair work and delivery of replacement which are necessary according to the supplier's discretion. Otherwise, the supplier is free from his liability due to a defect. The customer is entitled to remedy the defect by himself or have the defect remedied by a third party and to demand the supplier to reimburse the necessary costs only in urgent cases, whereby the supplier must immediately be informed, when safety of the factory is put into danger or in order to prevent the damage to grow disproportionately big or if the supplier is in default of remedying the defect and the customer has a contractually confirmed interest into timely performance or the supplier rejects seriously and finally to remedy the defects or particular circumstances exist which justify an immediate self-remedy after balancing the mutual interests.
- e) The above-mentioned provisions contain final regulations regarding the liability for defects of the products and exclude other warranty claims of any kind as far as there is no intentional or gross negligent behaviour of the supplier or persons employed in performance of his obligation (Erfüllungsgehilfe) or vicarious agents. Liabilities for injury of life, body or health as well as liability arising out of the German Product Liability Act remain unaffected.
- f) As far as intentional or gross negligent behaviour is not existing, claim for damages arising out of positive violation performance, culpa in contrahendo, claim in tort as well as out of all other legal grounds are excluded against the supplier and persons employed by the supplier in the performance of his obligations (Erfüllungsgehilfen) or vicarious agents. This shall particularly apply also for the claim of indirect damages or consequential harm caused by defect, unless the liability is based on the guarantee for certain characteristics which shall protect the purchaser against the risk of those damages. The liability for damages arising out of injury of the life, the body or the health remains unaffected.

- g) We are not liable for any third parties' advertising statement (for example manufacturer in the sense of Section 4 Subsection 1 and 2 of the Product Liability Act and the persons employed by the manufacturer in the performance of his obligations (Erfüllungsgehilfen)) regarding the nature of the purchased product or regarding certain characteristics of the goods in connection with the labeling, as far as this lack of knowledge regarding the advertising statement is not based on our intention or gross negligence or as far as the advertising statements have been corrected in equally entitled way at the time of the conclusion of the contract or as far as the advertising statement could not influence the decision for the purchase.

10. Export

Articles which are subject to an export/ re-export prohibition will have a notice on the invoice or on the delivery note, as far as Nagase is under the obligation to his suppliers and/or to public authority to comply with the regulations. The articles shall not be exported by the customer. The export prohibition also applies to the customer and has to be transferred to every further customer.

11. Scope of Delivery, Export and Packaging

Nagase reserves the right to vary the scope of delivery up to +/- 5 %, if the safe and faultless transport of the products requires barrels or repositories as palletes containers or tanks. In this case, the order is considered as delivered for the full amount. The measures and weights which were taken in the factory or dispatching stock location shall be the determining factor for the calculations. The dispatch of the products shall be, provided that there is no agreement to the contrary, carried out by means of transport that Nagase chooses, whereby the risk is passed to the customer. Package that are contained in the price or which are invoiced separately will not be taken back by us. Markings that we put on the package shall not be removed.

12. Delivery

The Delivery is considered as fulfilled when the product leaves the factory of Nagase or the factory of Nagase's suppliers (Ex works), unless stated differently. All risks and costs that arise from transport, transfer, storage or delay of various means of transports, loading or unloading, as well as or the loss or damage of a product are borne by the customer. The customer or his agent has the duty to observe the legal regulation for transport, storage, loading, unloading of dangerous goods. Each delivery even such of continuous transaction is deemed to be a special (single) transaction. If a certain quantity is not called within the set period of delivery we can delete this quantity from the order without further demand note for the purchase, whereby we are entitled to reclaim the price reduction given for the delivered quantity.

13. Period of Delivery

Nagase endeavours to set the delivery dates precisely and to meet these delivery dates even if unforeseen difficulties may occur. The stated delivery dates are not binding and considered as target deadlines. The expiry of this deadline does not entitle the customer for a claim of damage. If an export or re-export prohibition is issued without that the supplier is responsible, he shall not be liable to pay damages. Keeping the delivery deadlines provide, that the customer performs its obligations in time especially concerning the provision of necessary specifications. If the customer does not fulfil his obligations, the delivery will be stopped or postponed. We reserve us the right for partial delivery as far as it can reasonably be expected to bear by the customer. If the dispatch is delayed or temporarily impossible for reasons that Nagase is not responsible, (acts of god, order of public authority) Nagase is entitled to storage the goods on expense of the customer. If the order has been changed subsequently by the customer, the period of delivery will be adapted appropriately as far as it causes delay.

14. Transfer of Risk

The legal effect of Section 447 I BGB becomes effective even if the delivery is a carriage free FOB or CIF delivery. The same applies to the provided dispatch equipment. The customer is liable for these equipments until they come back to our factory. The settled rental fees as well as the fees for delay have to be paid until the equipment for dispatch is returned. If the equipment has been returned damaged, the fees must be paid until the equipment is fully restored. In case the equipment was lost, the fees have to be paid until the replacement comes in.

15. Technical Information, Danger and Preventive Measures

Any technical information or support from or through Nagase can not constitute a warranty or a specification. Further, the customer declares to inform himself independently about all kinds of danger that can be caused by the product or transport or storage and about the preventive measures. The customer warrants that he passes on all the security related information that he is given from Nagase to his employees and all persons who transport or store or work with these products. Nagase is not liable for any kind of inappropriate handling, storage or transport of the products by the customer, employee or another third party.

16. Disturbance of the Operation

Nagase is not liable for damages arising out of acts of god, riots, wars, nature catastrophe or terrorism or other events for that Nagase is not responsible as strikes, lockouts, traffic interference or other disposition of high authority of the inland or abroad.

17. The right of Rescission of the Contract

If the customer declares the rescission of the contract, all other further going claims of the customer, particularly the termination or price reduction as well as compensation for damages of any kind, namely those damages which have not occurred to the delivered product itself, are excluded, as far as these damages have not been caused by the supplier or persons employed by the supplier in the performance his obligations (Erfüllungsgehilfe) or vicarious agents or as far as there are no damages arising out of the injury of the life, the body or the health. In case of unforeseen events in the sense of Chapter 16 of these GTC, as far as they substantially change the economic meaning or the content of the performance or as far as they have a substantial effect on the work of the supplier and in case it turns out after the conclusion of the contract that the performance is impossible, the contract will be appropriately adjusted. As far as this is not justifiable in the economic sense for Nagase, Nagase is entitled to entirely or partly rescind the contract. The customer has no claims for damages due to such a rescission of the contract, unless these claims have been caused by the intention or gross negligent behaviour of the supplier or persons employed by Nagase in the performance his obligations (Erfüllungsgehilfe) or vicarious agents. If Nagase intends to rescind the contract, he has to inform the customer immediately after Nagase has become aware of the consequence arising out of the event, even if an extension of the time for delivery has been agreed upon with the customer.

18. Jurisdiction / Governing law

The Law of the Federal Republic of Germany excluding the Convention of the international Sale of Goods of the United Nations (CSIG from 11th April 1990 in the effective version) shall apply. Place of jurisdiction shall be Düsseldorf. The place of performance for all mutual obligations is the premises of the supplier.

19. Translation / Applicable terms

This GTC is a translation from the German version of Nagase "Allgemeine Verkaufs- und Lieferbedingungen". However, only the German version is legally binding.