

# General Terms and Conditions of Purchase of the Nordeon GmbH

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## 1. Scope of Application

- 1.1. These General Terms and Conditions of Purchase (hereafter: "**Terms and Conditions**") govern the legal relationship between Nordeon GmbH (hereafter called: "**Nordeon**") and its suppliers (hereafter called: "**Supplier**") in view of supplies and services of the Supplier to Nordeon (hereafter called: "**Contractual Performance/s**").
- 1.2. The Contractual Performances shall be performed exclusively on the basis of these Terms and conditions unless there is written deviating agreement between Nordeon and the Supplier in individual cases.

General Terms and Conditions of the Supplier shall not be accepted by Nordeon even in the event that Nordeon does not explicitly contradict.

- 1.3. These Terms and Conditions shall apply to all present and future business relationships between Nordeon and the Supplier in as far as the Supplier is an entrepreneur as defined by Article 14 BGB [Civil Code].

## 2. Offers, Orders, Contracts

- 2.1. Offers by the Supplier concerning Contractual Performances are binding for the Supplier and free of charge for Nordeon. Nordeon is not obliged to accept the offers.
- 2.2. In the event that the Supplier provides a counter offer, its content shall become binding only, if Nordeon explicitly accepts or confirms this counter offer.
- 2.3. Orders, contracts as well as changes thereto, amendments and/or confirmations require the written form.

### 3. Performance Specifications, Changes in Performance Specifications

- 3.1 Performance Specifications shall be derived from the description of specifications as agreed with Nordeon within the framework of the preparation of the offer or in the course of contract placing. In as far as they do not contain detailed provisions, the Supplier shall be obliged to perform the contract with the diligence of an ordinary merchant in due consideration of the acknowledged state of the art technology, quality standards in line with industry standards and the interests of Nordeon in evidence to the Supplier. Liability of the Supplier for the correctness of his statements in brochures remains unaffected.
- 3.2 Nordeon shall be entitled to demand changes concerning Contractual Performances within the framework of what is reasonable.
- 3.3 In the event that Nordeon requests changes, the Supplier shall examine after receipt of the request and within a reasonable period, if the requested changes can be implemented from a technical point of view and/or with economically justifiable effort and if their implementation shall result in additional cost. In as far as the supplier incurs additional costs, the Supplier shall submit to Nordeon a revised offer to align the remuneration to the scope of the Contractual Performances which is to be changed, as well as a detailed cost calculation for the additional cost. The Supplier is obliged without prejudice of his possible claim for alignment of the remuneration to implement changes as requested by Nordeon if those are technically possible and can reasonably be expected from the Supplier.

### 4. Execution of the Contractual Performance

- 4.1 For the execution of the Contractual Performances the Supplier must, on request of Nordeon, name one or several central contact persons in each case. The

central contact persons are to be authorized by the Supplier to issue or to accept statements concerning issues relevant to the technical execution of the contract. Every change and every withdrawal of the central contact persons shall be reported to Nordeon in writing prior to its occurrence. In the event of unforeseen changes the statement shall be issued retrospectively without delay.

- 4.2 The Contractual Performances shall be provided exclusively by the Supplier. Delegating “services” (*Dienstleistungen*) and “work performances” (*Werkleistungen*) to subcontractors is permissible only with prior written consent by Nordeon.
- 4.3 The cooperation obligations to be fulfilled by Nordeon shall be determined in each individual contract.
- 4.4 The Supplier shall report encumbrances in fulfilling his Contractual Performance irrespective of which kind in writing or per e-mail to Nordeon.
- 4.5 The Supplier shall perform the Contractual Performances in his own name and for his own account; he shall not be entitled to represent Nordeon in legal transactions.

### 5. Issue of Materials by Nordeon and Packaging Materials

- 5.1 In as far as Nordeon provides tools, materials and/or other work equipment to the Supplier, these shall remain the property of Nordeon. They shall be marked by the Supplier as being the property of Nordeon and shall be kept separately from items of the Supplier or of third parties and must be used by the Supplier exclusively for the fulfilment of his contractual obligations towards Nordeon and only during the term of the contract. Tools, work equipment which are not designated to be consumed as well as unused materials shall be returned to Nordeon by the Supplier after the contract ends.

The Supplier shall undertake to conclude a loan contract for tools on request of Nordeon.

5.2 Nordeon shall not assume any rights and/or obligations of the Supplier towards third parties. Particularly Nordeon shall not enter into any employment relationships with employees or contractors of the Supplier in relationship with the Supplier.

5.3 Packaging materials for work equipment from Nordeon which has not been deemed returnable by Nordeon shall be disposed of by the Supplier at his cost and in compliance with legal provisions.

## **6. Terms and Conditions for Deliveries of Goods**

6.1 Unless otherwise agreed, the Supplier shall deliver goods to Nordeon at the cost and risk of the Supplier to the place of destination determined by Nordeon (DAP Springe, Incoterms 2010).

6.2 Partial deliveries shall be permitted only with prior written consent by Nordeon.

## **7. Deadlines and Terms**

7.1 Agreed deadlines and terms shall be binding for the Supplier. The Supplier shall be obliged to report immediately in writing if circumstances arise or become noticeable from which it can be deducted that the agreed Contractual Performance deadline cannot be adhered to - irrespective of their reasons,

7.2 In the event that the Supplier shall fall behind his delivery or performance obligations Nordeon shall be entitled to claim a contract penalty to the amount of 0,15 % of the value of the goods or the contract per day of the delay, however, not more than 5 % of the value of the goods or the contract. The Supplier shall be entitled to prove that Nordeon has incurred a lower loss or no loss at all; the contractual penalty shall then be reduced or be omitted respectively. Nordeon shall reserve the right to assert any fur-

ther claims from these Terms and Conditions or statutory claims.

7.3 In the event that performance of the contract becomes impossible, the obligation for consideration by Nordeon shall become void, unless Nordeon is responsible for the impossibility alone or to a predominant extent or is delayed in acceptance. In any other cases of impossibility Nordeon shall be entitled to withdraw from the contract. Nordeon's right to claims damage shall remain unaffected.

7.4 In the event of delayed performance by Force Majeure Nordeon shall be exempt from its obligation to accept the Contractual Performance ordered either partially or in total in as far as the Contractual Performance which is delayed by the Force Majeure will be no longer realizable for Nordeon - under consideration of commercial aspects. Strike, lock-out and/or default of a sub-supplier shall not be deemed events of Force Majeure unless the Supplier can prove that he has not been able to prevent the event in question.

## **8. Acceptance**

8.1 Work performances to be provided by the Supplier shall require written acceptance, unless otherwise agreed between Nordeon and the Supplier. In the event that Nordeon shall waive acceptance of a certain performance, Nordeon shall remain entitled to demand an acceptance procedure in the future after prior written notification.

8.2 In the event that acceptance procedures are agreed or are requested according to Article 8.1, the Supplier shall notify Nordeon of the completion of the respective Contractual Performance in writing or by e-mail. Nordeon shall state its acceptance within a reasonable period in as far as the Contractual Performance has been provided in due form.

## **9. Prices and Payment Conditions**

- 9.1 Unless otherwise agreed prices of the Supplier shall be fixed prices inclusive of any legally applicable VAT; prices shall comprise any and all costs incurred by the Supplier, particularly costs for freight and packaging, equipment and vehicle costs, contingency costs, expenses, overtime and/or bonuses.
- 9.2 The Supplier shall be obliged to raise a due invoice for the Contractual Performance provided by him which shall also contain the order number of Nordeon.
- 9.3 Unless otherwise expressly agreed between Nordeon and the Supplier Nordeon shall pay within 60 days net from invoice date.
- 9.4 Payment without reservation of the invoice amount by Nordeon shall not be deemed acceptance of the Contractual Performance as contractual duty.

## 10. Collateral Rights

Nordeon shall not accept any extended or prolonged retentions of title. Simple retention of title shall be accepted by Nordeon only in as far as it allows Nordeon to sell, process or mix the goods supplied within the framework of orderly business transactions.

## 11. Quality of Performances and Claims from Material Defects

- 11.1 Unless provided otherwise in an individual contract or in these Terms and Conditions, the Supplier warrants in consideration of legal provisions, that the goods and works performances supplied within the framework of the Contractual Performance comply with the agreed specifications and are free of material defects (*Sachmangel*).
- 11.2 Nordeon shall submit random samples of goods deliveries to an incoming goods examination in as far as this is reasonable for Nordeon within normal business conduct. Material defects or deviations in quantities which become apparent during the incoming goods ex-

amination shall be reported by Nordeon to the Supplier at the latest within 5 working days after receipt of goods.

In the event that a material defect (which has not been obvious during the incoming goods examination) or a deviation in quantities shall be determined at a later point, Nordeon shall report to the Supplier the material defect and the deviation in quantity respectively within 5 working days after its detection. Further obligations concerning notification of defects, particularly according to Article 377 HGB [Commercial Code] shall be excluded.

- 11.3 In the event that supply of goods and/or works performances provided within the framework of the Contractual Performance shall show a material defect, the Supplier shall be obliged to rectify the defect at Nordeon's option by supplementary performance, replacement delivery or new manufacture.
- 11.4 In the event that the Supplier shall not eliminate the defect according to Article 11.3 within a reasonable period after written request for elimination of defects by Nordeon, he rejects the elimination of the defect or the rectification of the defect has failed, Nordeon is entitled to withdraw from the contract in view of the defective goods or works performance or to demand a reduction.  
  
Rectification of a defect by the Supplier shall be deemed failed after the first unsuccessful attempt.
- 11.5 In the event of an unsuccessfully elapsed period of rectification Nordeon shall be entitled to itself rectify or cause to be rectified the defect of a works performance at the Supplier's cost.
- 11.6 In the event that Contractual Performances have not been provided in due manner and which have to be provided by the supplier as repeatable services (*nachholbare Dienstleistungen*), Nordeon shall request the Supplier to make up for Contractual Performances without

delay, shall reduce the remuneration in line with the undervalue of the non- or mal-performance or shall cause the service to be performed by a third party at the cost of the Supplier. In as far as a service which has not been rendered in due manner is non-repeatable, Nordeon shall be entitled to claim proportional reduction of the remuneration in line with the undervalue of the non- or mal-performance. Assertion of further damages remains reserved.

- 11.7 Claims for material defects by Nordeon shall be subject to statutory periods of limitation.
- 11.8 For the rest, liability for material defects and defects of title (*Rechtsmängel*) are subject to legal provisions.

## 12. Product Liability, Quality Assurance

- 12.1 In the event that third parties suffer personal or material damage due to product defects in goods supplied by the Supplier, the Supplier shall hold Nordeon harmless on its first request from any liability, in as far as the cause of damage lies within the realm and the organisational area of the Supplier and in as far as the Supplier itself is liable in external relations with third parties.
- 12.2 Within the framework of its liability for damage claims as defined in Article 12.1 the Supplier shall furthermore be obliged to reimburse Nordeon for any and all expenditures which arise from or in context with a product recall campaign carried out by Nordeon. Information concerning the content and scope of the product recall campaign to be carried out by Nordeon shall be notified to the Supplier by Nordeon - in as far as reasonable - and the Supplier shall be given the opportunity to submit a statement. Other legal entitlements shall remain unaffected.
- 12.3 The Supplier has to perform quality management of a type and scope which is in keeping with the latest state of the art. He shall prove this to Nordeon on

request. On request of Nordeon the Supplier shall conclude a corresponding quality management agreement.

## 13. Third Party Property Rights

- 13.1 The Supplier shall guarantee that any and all supplies and services of the Supplier within the framework of the Contractual Performance are free from rights of third parties and that by utilization of the Contractual Performances as per agreement Nordeon or its clients shall not (i) infringe labels, names, patents property rights or similar intellectual property rights and/or (ii) does not constitute mis-usage or unlawful usage of business secrets of third parties (jointly called hereafter: "**Infringement of Property Rights**").
- 13.2 In case of an Infringement of Property Rights for which the supplier is responsible according to Article 13.1, the Supplier shall be obliged regardless of any further claims by Nordeon to
  - a) procure for Nordeon the right to continue to use the respective Contractual Performance as per agreement; or
  - b) to replace the respective Contractual Performance or to modify it in such manner, that usage as per agreement no longer infringes on the rights of third parties without affecting usage as per agreement; as well as
  - c) to hold Nordeon harmless from any liability for the Infringement of Property Rights which is caused by usage of the Contractual Performance as per agreement.

## 14. Insurance

The Supplier shall undertake to procure sufficient comprehensive general liability insurance and a product liability insurance with appropriate coverage for personal and material damage as well as

for property loss and to prove this insurance coverage to Nordeon on request.

**15. Term, Termination, Rights and Obligations on Termination of the Contract**

15.1 The term of the contract shall be determined by the individual contract. If there are no conditions determined in this context and the Contractual Performances are not limited to the supply of goods and/or works performances, then the contract shall be valid for an undetermined period of time and can be terminated by Nordeon or the supplier with a notice period of three months towards the end of a calendar month.

15.2 The right to terminate the contract without notice for good reason remains unaffected. Good reason for termination without notice exists particularly if

- a) insolvency proceedings have been opened regarding the assets of one of the contractual parties or if the opening of such proceedings has been denied due to lack of assets;
- b) one of the contractual parties violates essential obligations of the contract and if the violation is not eliminated within 15 days in spite of written reminder;
- c) the Supplier has repeatedly been in default of a contractual performance.

15.3 Partial terminations by Nordeon to Supplier shall be permissible, particularly in view of individual types of Contractual Performances.

15.4 On termination of the contract any and all utilization rights which Nordeon has granted to the Supplier shall be cancelled and all corresponding documentation, copies and any notes prepared on their basis or documents and/or any other data mediums shall at the discretion of Nordeon be surrendered or, in as far

as those are not originals, to be destroyed.

**16. Set-off, Assignment, Right of Retention**

16.1 Set-off by the Supplier shall be permissible only in case of undisputed claims or claims that have been established as final and absolute.

16.2 The Supplier shall not have the right without express written agreement from Nordeon to assign his claims against Nordeon or to submit them to third parties for collection. In the event that the transaction is a commercial transaction, Article 354a HGB shall apply.

16.3 The Supplier shall not be entitled to the right of retention in as far as it derives from other legal transactions with Nordeon.

16.4 Nordeon shall be entitled to enforce a right of retention until the Supplier has rendered the Contractual Performance and the agreed ancillary services in full.

**17. Utilisation Rights in Performance Results**

17.1 In the event that the performance of the contract requires provision of performance results by Nordeon to the Supplier, Nordeon shall grant the Supplier a simple non-assignable and non-sub licensable utilization right which is limited to the term of the contract and which allows the Supplier to utilise the performance results exclusively for the purpose of providing the Contractual Performance. Any utilisation deviating or exceeding the above requires prior written consent of Nordeon.

17.2 In as far as the Supplier achieves performance results within the framework of the contractual performance which are protected by copyright, patent, other industrial property right or which are protected or capable of being protected as secret technical know-how, the Supplier shall grant Nordeon an exclusive

and unlimited right in terms of territory, time and content for the purposes of Nordeon and its clients, including the rights to sub-license and to make amendments.

## 18. Secrecy

18.1 Unless otherwise agreed in the contract the Supplier shall undertake to keep confidential company and trade secrets and other technical or commercial information of Nordeon and its clients of which he gleans knowledge within the framework of the execution of the contract, to impose a corresponding obligation to secrecy to its employees and subcontractors and to use confidential information exclusively in context with the execution of the contract.

For the Supplier the obligation to secrecy applies particularly to any and all performance results which are provided by Nordeon in compliance with Article 17.1.

18.2 The obligation to secrecy shall not apply in view of information,

- a) which at the time of transfer were evidently in the public domain.
- b) the usage or transfer of which the respective other party has explicitly agreed to in writing,
- c) the transfer of which is required for the fulfilment of the obligations under the contract or
- d) the transfer of which is required by legal provisions or by official directives.

18.3 The obligation to secrecy according to this Article 18 shall continue to be effective beyond termination or rescission of the contract as long and as far as none of the conditions listed in Article 18.2 in view of the respective information has occurred.

18.4 In as far as requested by Nordeon the parties shall settle the obligation to secrecy in a separate secrecy agreement.

## 19. Data Privacy

19.1 The Supplier undertakes to comply with the legal provisions concerning data privacy.

19.2 In as far as the Supplier collects, processes or uses personally identifiable information from Nordeon by way of order-related data processing subject to directives, the parties shall conclude an agreement concerning order-related data processing according to Article 11 BDSG [Federal Law on Data Protection].

## 20. Final Clauses

20.1 For these Terms and Conditions as well as for the contracts concluded between Nordeon and the Supplier the law of the Federal Republic of Germany shall apply under exclusion of the reference provisions of the Private International Law and the Vienna UN convention on the international sale of goods.

20.2 Deviations from these Terms and Conditions shall require the written form. This shall also apply to amendments to this clause on the requirement of the written form.

20.3 If the Supplier is a merchant, a legal entity under public law or a special asset under public law, the place of jurisdiction for all disputes shall be exclusively Hannover. Nordeon is, however, entitled to enforce claims against the Supplier at its general place of jurisdiction.

20.4 Should one or several provisions of these Terms and Conditions be or become ineffective then this shall not affect effectiveness of the Terms and Conditions in total.