

# NSC Sicherheitstechnik GmbH

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## **General Terms and Conditions of Business**

- A. Applicability of the Terms and Conditions of Business
- B. Purchasing and Order Terms
- C. General Terms and Conditions of Service

## **A. Applicability of the Terms and Conditions of Business**

### **A.1**

These Terms and Conditions shall apply to all business relationships between **NSC** and its contracting partners, even if specific reference to the Terms and Conditions is no longer made in individual transactions, provided that the contracting partner is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law, or a fund under public law.

The term "contracting partners" in these Terms and Conditions refers to partners who conduct business with **NSC** as providers and/or clients.

### **A.2**

These Terms and Conditions apply at all times and exclusively. Deviating, conflicting or supplementary general terms and conditions of the contracting partner shall become part of the contract only if and insofar as **NSC** has expressly approved their applicability in writing.

Individual agreements with the contracting partner that are made in individual cases (including side agreements, supplements and amendments) shall always have priority over these Terms and Conditions. Provided that no counter-evidence is furnished, a written contract or the written confirmation of **NSC** shall be authoritative as far as the content of such agreements is concerned.

### **A.3**

References to the applicability of statutory regulations only have clarifying significance. Statutory regulations thus apply even without such clarification, provided they are not directly modified or expressly excluded in these Terms and Conditions.

### **A.4**

The same words may have different meanings in different legal systems. In foreign language versions of these terms and conditions of business, that is to say ones not in German, the German legal meaning of the corresponding words shall apply.

## **B. Purchasing and Order Terms**

### **B.1 Entire Contract/Prohibition of Assignment**

#### **B.1.01**

The engagement and purchase orders placed by **NSC** shall be governed exclusively by the Purchasing and Engagement Terms of **NSC**.

#### **B.1.02**

All orders issued and purchases made by **NSC** shall – insofar as these conditions do not settle the matter – be settled **solely** on the basis of the legal provisions.

#### **B.1.03**

Offers of the supplier or other contracting partner of **NSC** are subject to express written acceptance by **NSC**.

#### **B.1.04**

The supplier is not permitted to transfer the rights and obligations from this purchase order to third parties without the written approval of **NSC**. This does not apply to the advance assignment of the purchase price claim within the scope of an extended retention of title.

### **B.2 Payment**

#### **B.2.01**

Subject to the condition that the invoice will be reviewed later on, payments of **NSC** are to be made

- within 14 days of the receipt of the invoice less 3 per cent cash discount
- or within 30 days without any deductions.

#### **B.2.02**

In the event of goods from deliveries by the contractual party arriving early, the invoice shall be valued as of the delivery date agreed with **NSC**. This value date will be deemed to be the date of receipt of the invoice.

#### **B.2.03**

In the case of defective goods and/or services or partial deliveries by the contractual partner contrary to the contract, the invoice shall be valued as of the date

of freedom from defects and/or complete delivery. This value date will be deemed to be the date of receipt of the invoice.

### **B.3 Warranty and Other Liability**

The contractual partner of **NSC** must provide a warranty and compensation for damages in the legally-required scope and for the legally-required duration unless Section B.4 below stipulates otherwise.

## **B. Supplier recourse**

### **B.4.01**

In addition to claims for defects, **NSC** is entitled without limitation to the right of recourse within a supply chain as provided by law (supplier recourse pursuant to Sections 445a, 445b, 478 German Civil Code (BGB)). In particular, **NSC** is entitled to demand exactly the same type of subsequent performance (repair or replacement) from the supplier that **NSC** owes its customers in individual cases. **NSC's** statutory right of choice (Section 439 (1) German Civil Code (BGB)) is not restricted thereby.

### **B.4.02**

Before **NSC** recognises or fulfils a claim for damages asserted by its customers (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and 3 German Civil Code (BGB)), **NSC** will notify the supplier, providing a brief statement of the facts, and ask for a written statement. If no substantiated statement is provided within a reasonable period of time and an amicable solution cannot be found, the warranty actually provided by **NSC** shall be deemed to be owed to its customer. In this case, the supplier bears the burden of proving otherwise.

### **B.4.03**

The claims of **NSC** arising from supplier recourse shall apply even if the defective goods have been further processed by **NSC** or another contractor, e.g. by incorporation into another product.

## **B.5 Place of performance/ Jurisdiction/ Choice of law**

### **B.5.01**

The domicile of **NSC** shall be the place of fulfilment and payment for both parties.

### **B.5.02**

The courts of Bielefeld, Germany, shall have jurisdiction over all disputes from or in connection with the contractual relationship between the contracting partner and **NSC**.

In the aforementioned case, **NSC** may also bring action against the contracting partner at his domicile.

### **B.5.03**

The laws of the Federal Republic of Germany shall apply, under exclusion of uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

## C. General Terms and Conditions of Service

### C.1. Order confirmation and scope of service

#### C.1.01

The content of the corresponding contract requires written order confirmation from **NSC**, if applicable in conjunction with the specification created by **NSC**. Verbal agreements in conjunction with the conclusion of contracts made by employees of **NSC** who are not authorised to represent the company also require written confirmation from **NSC** in order to be valid.

#### C.1.02

The client must provide **NSC** with all information and documents which are required or useful for the provision of the contractually agreed services. If a specification is created and presented to the client for examination and approval, this specification shall bindingly establish the scope of services for both sides.

#### C.1.03

Information on characteristics of the products and services of **NSC** shall be attributable to **NSC** only if this information originates from **NSC**, is provided by express order of **NSC** or is expressly authorised by **NSC**, or **NSC** knew or had to know this information and has not disclaimed it within a reasonable period. **NSC**'s assistants in the sense of Section 434 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch; BGB) do not include authorised dealers and clients of **NSC** acting as resellers. Adequate corrections of descriptions of characteristics in the sense of Section 434 para. 1 BGB may in any case be made on the **NSC** homepage at [www.nsc-sicherheit.de](http://www.nsc-sicherheit.de).

#### C.1.04

**NSC** shall only owe consulting services on the basis of a separate agreement and in exchange for separate remuneration.

### C.2. Trademarks/Rights of third parties

#### C.2.01

**NSC** is entitled to affix brand and trademarks. The client is prohibited from removing such marks which have been affixed by **NSC**.

#### C.2.02

The client is responsible to **NSC** for ensuring that the templates, designs, plans, texts, trademarks etc. may be rightfully used. The client therefore releases **NSC** from any third party claims for breaches of relevant intellectual property rights.

### C.3. Delivery

#### C.3.01

The type of dispatch shall be at the discretion of **NSC** if a specific type of dispatch is not required or agreed.

#### C.3.02

The place of fulfilment for deliveries is **NSC**'s premises even if **NSC** provides the transport itself.

#### C.3.03

If the goods leave **NSC**'s premises or warehouse, the client assumes all risks.

#### C.3.04

In the case of direct deliveries ex works or preliminary suppliers, the risks shall be transferred to the client upon dispatch. Insurance of the delivery shall only be arranged at the request and expense of the client.

#### C.3.05

The risk is transferred to the client with the transfer of the good to the carrier, notification of readiness for dispatch or provision on the agreed delivery date.

### C.4. Delivery time

Delivery **dates** refer to a time, whether a specific day or a calendar week etc., on which the delivery must be dispatched by **NSC**.

Delivery **periods** refer to the period within which a

delivery must take place.

Delivery **time** is the overall term for delivery dates and periods.

#### **C.4.01**

Any agreed delivery **periods** shall apply ex works unless something different is explicitly agreed. The term delivery **periods** includes the relevant performance periods. Such delivery **periods** shall begin at the time stated in the order confirmation, at the earliest, however, when the documents, approvals, calls and shipping addresses to be provided by the client are present, all details of the order have been clarified and the client provided any partial payments and/or securities.

If a delivery **period** is agreed, this shall be extended accordingly if the client is delayed in the provision of the documents, authorisations, shipping address, partial payments or securities to be provided. The same shall apply if a delivery **date** has been agreed.

A corresponding delay of delivery **dates** or extension of delivery **periods** shall also take place if the requirements for the services to be provided by **NSC**, which are to be fulfilled by the client or a third party, are not fulfilled in due time.

#### **C.4.02**

If the client requests modifications to the order after its confirmation, the delivery **period** shall only begin upon confirmation of the change by **NSC**. Any agreed delivery **date** shall be delayed accordingly.

#### **C.4.03**

The delivery **period** shall be extended accordingly upon the occurrence of unforeseen obstacles which **NSC** is unable to avoid in the circumstances despite taking due care, e.g. a total or partial failure of subcontractors for which **NSC** is not responsible. In such a case, **NSC** may rescind the contract.

### **C.5. Partial deliveries**

#### **C.5.01**

**NSC** is entitled to make partial deliveries to the client within a reasonable scope.

#### **C.5.02**

If **NSC** exercises this right, payments may not be withheld by the client for this reason.

### **C.6. Prices**

#### **C.6.01**

The prices shall apply – unless something different is agreed – from its premises, ex works and/or ex warehouse **excluding** packaging.

#### **C.6.03**

If packaging is required, **NSC** will package the goods according to the existing regulations and proceed according to Section 4 of the German Packaging Ordinance.

#### **C.6.04**

Prices as well as costs must be considered plus applicable VAT.

### **C.7. Terms of payment**

#### **C.7.01**

Unless otherwise agreed, payments shall be due immediately.

#### **C.7.02**

Payments are due to **NSC** at the latest 10 days after the invoice date. As soon as this time is passed, the debtor enters into default of payment.

#### **C.7.03**

The place of performance for payments is the place of business of **NSC**.

#### **C.7.04**

The client may only offset against undisputed or legally established claims.

#### **C.7.05**

Except in cases under C.7.04, the client shall have no right of retention.

Rights of the client under Section 320 BGB shall be maintained so long as and to the extent that **NSC** fails to fulfil its warranty obligations.

#### **C.7.06**

Should the client's financial situation deteriorate significantly after the conclusion of the contract or – if the client's declaration of intent is required for the conclusion of the contract – after the last declaration of intent of **NSC** with a view to the conclusion of the contract, **NSC** may, at **NSC**'s discretion, demand advance payment or collateral for all deliveries and services still to be performed under the same legal relationship (Section 273 of the German Civil Code (BGB)). If the client does not comply with this demand, **NSC** may rescind the said contracts or, after determining a specific period, claim damages instead of the performance in the amount of 25 per cent of the order total not executed, provided that the client does not furnish evidence of less damage.

Only if, by way of exception, an unusually high damage is on hand in the individual case, **NSC** may demand compensation for the damage that exceeds the lump sum; the lump sum shall be offset against this claim.

### **C.8. Inspection and reporting obligation**

#### **C.8.01**

Deliveries from **NSC**, including drawings, execution plans and the like, must be immediately examined by clients upon receipt for their usability and correctness.

#### **C.8.02**

Clear defects must be immediately notified to **NSC** with a detailed description of the specific complaints, at the latest within 6 days following arrival at the final destination.

#### **C.8.03**

The client must also report hidden defects in writing immediately upon discovery, at the latest however within 14 days following discovery of the defect, in the required form.

### **C.9. Claims of the client for defects (Warranty)**

*Warranty* in these Terms and Conditions of business means: claims for improper performance due to delivery of a defective good.

#### **C.9.01**

Unless stated otherwise below, the statutory provisions shall apply to the rights of the customer with respect to material defects and defects in title (including incorrect and short deliveries, faulty assembly or incorrect assembly instructions). The special statutory provisions governing deliveries of unprocessed goods to end-customers remain unaffected in all cases (supplier recourse pursuant to Section 478 German Civil Code (BGB)), even if they have further processed them. Supplier recourse claims are excluded if the defective goods were further processed by the customer or another company, e.g. by incorporation into another product.

#### **C.9.02**

If the client does not comply with the inspection and reporting obligations according to section **C.8.**, **NSC** shall not be liable for any defects not reported.

#### **C.9.03**

The general limitation period for claims due to defects in quality and title is **12 months** from the delivery or, if an acceptance has been agreed, from the acceptance.

The statutory special rules regarding limitation periods remain unaffected (in particular section 438 para. 1 no. 1 and no. 2, para. 3, sections 444 and 445b BGB).

#### **C.9.04**

**The limitation period of 12 months shall also apply to contractual and extra-contractual claims for damages based on a defect of the goods.**

However, this shortened period of limitation shall not apply

- if the damage was caused by intent or gross negligence of **NSC** or its representatives or agents;

- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 BGB has been assumed by **NSC**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz; ProdHaftG).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the client.

#### **C.9.05**

If works or replacement deliveries provided by **NSC** limit or interrupt a warranty period, such a limitation or interruption shall only apply to the functional unit affected by the replacement delivery or remediation.

#### **C.9.06**

In case the client has a right to supplementary performance, **NSC** will first decide whether the supplementary performance is to take place through elimination of the defect (rectification) or through delivery of flawless goods (replacement delivery). The right to refuse supplementary performance under the statutory conditions remains unaffected.

#### **C.9.07**

No warranty is given for damages which are not **NSC's** responsibility. This includes, for example, damage from the following causes: unsuitable or improper use, incorrect assembly or operation by the client or third parties, natural wear, incorrect or negligent handling, unsuitable operating materials or substitute materials or chemical influences, if these are not **NSC's** responsibility.

#### **C.9.08**

**NSC** provides no warranty for components provided by the client. Unless expressly agreed otherwise, the client alone shall be responsible for the suitability and properties of such components.

#### **C.9.09**

In the event of the client's non-compliance with the operating and maintenance instructions, it will be assumed that any damage incurred is the result of this. In this case, the burden of explanation of proof that this is not the case lies with the client.

#### **C.9.10**

**NSC** may make the supplementary performance conditional upon the payment of the due purchase price by the client. However, the client may withhold a portion of the purchase price that is reasonable in proportion to the defect.

#### **C.9.11**

Work on items delivered by **NSC** or services otherwise provided by **NSC** shall only be considered as defect elimination or rectification work,

- **insofar as** the deficiency has been explicitly recognised by **NSC**
- **or insofar** as claims for defects have been demonstrated
- **and insofar** as these demonstrated claims for defects are justified.

In the absence of these requirements, such works are to be considered special services.

#### **C.9.12**

Any other rectification work of defects or replacement deliveries by **NSC** shall be considered a special service if they do not take place in recognition of a legal obligation.

#### **C.9.13**

Expenses required for inspection or rectification, in particular for transport, weighing, labour and material costs (as well as if necessary removal and installation costs) will fundamentally be borne by **NSC**, if a defect in fact exists. Otherwise, **NSC** may demand reimbursement of the costs incurred from the unjustified defect elimination request (including but not limited to inspection and transport costs),

unless the non-existence of the defect was not obvious to the client.

In case systems delivered by **NSC** are set up or operated outside the client's headquarters despite the fact that the respective contract was concluded with a subsidiary or head office of the client in Germany, the client shall bear the additional costs that may arise because any warranty measures to be performed by **NSC** result in transport costs, travel costs and other overhead which go beyond the borders of Germany.

#### **C.9.14**

The liability for reimbursement of expenses of **NSC** is otherwise in principle governed by the statutory provisions (in particular, Section 439 (3) BGB) for the costs of removal, installation or affixing of the defective item.

#### **C.9.15**

The client must grant **NSC** the required time and opportunity to carry out the remediation of defects and replacement deliveries owed under the warranty. The client shall only have the right to remedy the defect itself or through third parties, and subsequently request remuneration of the corresponding costs from **NSC** in urgent cases endangering operational safety and to avoid disproportionately larger damages, in which case **NSC** must be informed immediately – and if possible beforehand – or if **NSC** is delayed in the remediation of a defect.

#### **C.9.16**

If **NSC** arranges third-party services on behalf of and at the expense of the client, said third party shall be solely responsible. **NSC** shall provide no advice regarding the selection of third-party services by the client unless something different is agreed. If the client requests advice in this regard, this shall only be provided on the basis of a separately-concluded agreement and in exchange for compensation.

#### **C.9.17**

If the rectification has failed or a deadline to be set by the client for rectification has passed without

rectification (Section 323 1 and/or Section 281 para. 1 BGB) or unnecessary because of statutory regulations (Section 323 para. 2 and/or Section 281 para. 2 BGB) or it can be refused by **NSC** in accordance with Section 439 para. 3 BGB or it is unacceptable for the client, then the client can withdraw from the contract. However, no right of rescission shall apply in the case of a minor defect.

#### **C.9.18**

The client shall only have a right to a reduced price with the approval of **NSC** .

#### **C.9.19**

**Claims of the client for damages or compensation of expenses made in vain are excluded even in the case of defects according to section C.10.01 and shall only exist in the cases of section C.10.02 and this Section C.9.**

### **C.10. Other Liability**

#### **C.10.01**

**Unless provided otherwise in these General Terms and Conditions and subject to section C.10.02 below, any claims of the client for damages and compensation of expenses against NSC are excluded, regardless of what the legal basis may be. In particular, this also applies to tort claims (e.g. section 823 BGB).**

**Insofar as the liability is excluded or limited, this also applies to the personal liability of the employees, staff members, representatives and vicarious agents of NSC.**

#### **C.10.02**

The limitations of liability in these General Terms and Conditions shall not apply:

- if the damage was caused by intent or gross negligence of **NSC** or its representatives or agents;
- in the case of culpable breach of material contractual obligations, in which case the damages shall be limited to the damage typical for the contract, which is foreseeable at the conclusion of the



contract; Material contractual obligations are obligations that protect legal positions of the contracting partner that are material to the contract, which the contract must grant him under consideration of its content and purpose as well as contractual obligations whose fulfilment is essential to the due performance of the contract, compliance with which the client has regularly relied on and may rely on;

- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 BGB has been assumed by **NSC**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz; ProdHaftG).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the client.

#### **C.10.03**

In the case of a breach of an obligation that does not consist of a defect, the client can only rescind or terminate the contract if **NSC** is responsible for the breach of the obligation. An unlimited right of termination of the client (especially pursuant to Sections 651, 648 BGB) is excluded. Apart from this, the statutory conditions and legal consequences shall apply.

#### **C.11. Call orders**

##### **C.11.01**

If call orders are not placed within 4 weeks following

the end of the agreed call period, **NSC** shall be entitled to demand payment.

##### **C.11.02**

The same shall apply for call orders without any specific agreed call period if 4 months have elapsed without a call since receipt of the readiness for dispatch.

#### **C.12. Storage/Default of Acceptance**

##### **C.12.01**

If temporary storage of finished goods by **NSC** becomes necessary due to a default in acceptance [“**Annahmeverzug**”], this does not give rise to a contract to provide storage.

**NSC** is not obliged to insure stored goods.

##### **C.12.02**

In the case of a default in acceptance, **NSC** is entitled to store the good in a commercial warehouse at the client's risk and expense.

##### **C.12.03**

In the case of storage on its own premises, **NSC** may invoice 0.5% of the invoice amount, with a minimum amount of € 25.-- for each cubic metre of goods per month. The client is free to furnish evidence that the claim did not accrue or is lower.

##### **C.12.04**

The two preceding sections shall also apply in the event that shipping is delayed by a minimum of 2 weeks past the notification of readiness to dispatch at the client's request.

##### **C.12.05**

If, despite the setting of a deadline, the client does not accept the goods, **NSC** shall be entitled, regardless of the demonstration of actual damages, to demand 20% of the agreed price as a fixed fee. The client retains the right to furnish proof of a lower percentage.

#### **C.13. Retention of title**

##### **C.13.01**

Any deliveries from **NSC** take place subject to

retention of title.

#### **C.13.02**

This reservation and the following extension shall apply until all claims from the business relationship with the client are paid and until full release from any contingent liabilities that **NSC** has assumed on behalf of the client in connection with the delivery.

#### **C.13.03**

Pledging of the delivered goods is not permitted.

#### **C.13.04**

**NSC** is entitled to demand the return of the retained good for cause, in particular in the case of payment default and to offset the proceeds of sale, without this being considered a withdrawal from the contract.

A requirement for this is that **NSC** has threatened to demand the return subject to a period of 7 days set by the client. This notice period may occur at the same time as the warning.

#### **C.13.05**

If, and to the extent that, the recovered good may be re-sold as new by **NSC** to another purchaser in the course of regular business, the client shall, even without any documentation, owe 10% of the invoice value of the good as a return fee. If the goods cannot be sold as new in the course of the normal operations, the client shall – without the need for detailed evidence – owe another 30% of the goods invoice value for the value loss. In every case, the client may furnish proof of a lower percentage.

#### **C.13.06**

**NSC** reserves the right to claim for other, more extensive damages.

#### **C.13.07**

The handling and processing of goods delivered by **NSC** shall in any case take place on behalf of **NSC**, meaning that good remains the property of **NSC** in any state of handling and processing and as a finished good, to the exclusion of the consequences of Section 950 BGB. If the retained good is processed using other items also delivered, to the

exclusion of the legal consequences of Section 950 BGB, **NSC** shall acquire at least co-ownership of the new item on the basis of the ratio of the invoice value of **NSC**'s goods to the invoice value of the other processed items.

#### **C.13.08**

The client hereby cedes all claims from the re-sale, processing, installation and other use of our goods to **NSC** in advance. If the product sold, processed or installed by the client includes items which are not the property of the client and the other suppliers have also agreed to a retention of ownership with sales clause and prior cession, the cession shall take place in the amount of the ownership percentage of **NSC** corresponding to the fraction of the claim, otherwise in the total amount.

#### **C.13.09**

The authorisation of recovery which the client retains despite the cession shall in any case expire by cancellation at any time.

#### **C.13.10**

If the value of the securities provided to **NSC** exceeds **NSC**'s claims against the client by 50% for the delivery of goods or by 20% for other services, **NSC** shall be obliged, at the client's request, to release corresponding securities of **NSC**'s choice.

### **C.14. Place of performance and fulfilment**

#### **C.14.01**

The place of performance and fulfilment for the services to be provided by **NSC** shall always be the premises of **NSC**. The same shall apply if **NSC** provides the transport itself.

#### **C.14.02**

The premises of **NSC** shall be the place of performance and fulfilment for all services to be performed by the **client**.

### **C.15. Headings/Definitions**

#### **C.15.01**

All headings in **NSC**'s General Terms and Conditions are solely intended for improved legibility and have

no influence on the meaning and interpretation of the individual provisions.

#### **C.15.02**

Written declarations of intent and awareness in the sense of **NSC** General Terms and Conditions also include statements transferred in text form (i.e. via fax or e-mail).

### **C.16. Jurisdiction and Substantive Law**

#### **C.16.01**

Where the customer is a merchant in terms of the German Commercial Code (HGB), a corporate body under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered domicile of **NSC** in Bielefeld.

However, **NSC** is in any case also entitled to bring legal action at the place of performance of the supply obligation pursuant to these General Terms of Service or an overriding individual agreement, or at the customer's general place of jurisdiction. This shall not affect overriding statutory provisions, in particular pertaining to exclusive competence.

#### **C.16.02**

The laws of the Federal Republic of Germany shall apply, under exclusion of uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

If the choice of German law is not permissible or invalid, the conditions and effects of the retention of title pursuant to para. **C.13.** shall be governed by the laws at the respective location of the goods.

### **C.17. Miscellaneous**

Should any provision of these Terms and Conditions or a provision included in them later on be or become fully or partially invalid, void or unenforceable or should these Terms and Conditions turn out to have a gap, this shall not affect the validity of the other provisions. Sections 306 para. 2 and 3 BGB remain unaffected.