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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**, at least in text form (Section 126b BGB).

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**, unless otherwise provided for in Section 354a of the German Commercial Code (HGB). Monetary claims may be validly assigned notwithstanding this prohibition. **NSC** may, however, make payment to the supplier with discharging effect.

B.2 Payment

B.2.01

Payments by **NSC** are subject to subsequent verification of the invoice.

Unless otherwise agreed, payment shall be made, at the discretion of **NSC**, within 14 days with a 3% discount or within 30 days net without deduction.

The payment and discount periods shall commence upon receipt of a valid, verifiable invoice, but not before the goods have been received in full and free from defects or the service has been provided in full and free from defects to **NSC**.

B.2.02

In the event of goods from deliveries by the supplier arriving early or services being provided earlier than

contractually agreed or arranged, the contractually agreed payment and cash discount periods, by way of derogation from B.2.01, shall not commence until the contractually agreed delivery or service date.

B.2.03

In the case of defective goods and/or services or partial deliveries by the contractual partner contrary to the contract, **NSC** is entitled to withhold payment to a reasonable extent until full rectification or a defect-free replacement delivery has been made. In this case, the discount and payment periods for the affected part of the delivery shall only recommence once the defect has been fully rectified or a complete replacement delivery has been made.

B.3 Obligation to Inspect and Give Notice of Defects

B.3.01

The commercial duty to inspect and give notice of defects (Section 377 HGB) on the part of **NSC** is limited to checking the delivered goods for identity (conformity with the order), quantity (obvious discrepancies in quantity) and externally visible transport damage. **NSC** is under no further obligation to inspect the goods upon receipt.

B.3.02

Notices of defects from **NSC** are deemed to have been given in good time if they are received by the supplier within a period of 7 working days (Saturdays do not count as working days) from the delivery of the goods. In the case of hidden defects that only become apparent during processing, assembly or commissioning of the goods, this period shall not commence until the defect is actually discovered. The notice of defect may be given in writing, in text form (e.g. by email) or verbally.

B.4 Warranty and Other Liability

The supplier of **NSC** must provide warranty and compensation for damages in the legally-required scope and for the legally-required duration unless Section B.5 below stipulates otherwise.

B.5 Supplier recourse

B.5.01

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 clients in individual cases. **NSC's** statutory right of choice (Section 439 (1) German Civil Code (BGB)) is not restricted thereby.

B.5.02

Before **NSC** recognises or fulfils a claim for damages asserted by its clients (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 clients. In this case, the supplier bears the burden of proving otherwise.

B.5.03

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.6 Place of performance/ Jurisdiction/ Choice of law

B.6.01

The place of performance for all deliveries and services provided by the supplier, as well as for all payment obligations of **NSC**, is the registered office of **NSC** in Schloß Holte-Stukenbrock.

B.6.02

The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship between the supplier and **NSC** shall be – depending on subject-matter jurisdiction – the Gütersloh Local Court or the Bielefeld Regional Court, provided that the contracting party is a merchant in

terms of the German Commercial Code (HGB), a corporate body under public law or a special fund under public law. **Mandatory statutory provisions regarding exclusive places of jurisdiction remain unaffected by this provision.**

NSC shall, however, remain entitled to bring proceedings against the contracting party at the latter's general or statutory place of jurisdiction.

B.6.03

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 (the text form specified in Section 126b BGB is sufficient) 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, at least in text form (Section 126b BGB).

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** link in the contractual chain in the sense of Section 434 para. 3, first sentence, 2b) 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. 3, third sentence, BGB may in any case be made on the **NSC** homepage at www.nsc-sicherheit.de.

NSC is not bound by public statements which could not have influenced the client's decision to purchase.

C.1.04

NSC attributable characteristics that involve measurable values are to be understood subject to a tolerance

customary in the industry. Exceeding this tolerance does not automatically constitute a defect.

B.1.05

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

C.2. Trademarks and Rights of third parties

C.2.01

NSC is entitled to affix brand and trademarks. The client is prohibited from removing or altering 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 and do not infringe any third-party rights. The client therefore releases **NSC** from any third party claims for breaches of relevant intellectual property rights or industrial property rights, as well as against the necessary costs of legal defence.

C.3. Delivery and delay in delivery

C.3.01

Delivery is ex-works. At the client's request and expense, the goods shall be dispatched to another destination ("Versendungskauf"). Unless otherwise agreed, **NSC** is entitled to determine the method of dispatch (in particular the carrier, route and packaging) itself.

C.3.02

The place of performance for deliveries and any subsequent performance is the registered office of **NSC** in Schloß Holte-Stuckenbrock. This applies even if **NSC** undertakes or organises the transport itself in individual cases.

C.3.03

The risk of accidental loss and accidental deterioration of the goods shall pass to the client at the latest upon transfer to the client or (in the case of "Versendungskauf") upon transfer to the carrier or any other person designated to carry out the dispatch. Where acceptance has been agreed, this shall be decisive for the passing of risk. In all other

respects, too, the statutory provisions governing contracts for work and services shall apply mutatis mutandis to an agreed acceptance. The transfer or acceptance shall be deemed to have taken place even if the client is in default of acceptance.

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

All delivery times are subject to the service being available at **NSC**. If the service is not available (unavailability of the service), **NSC** shall inform the client of this without delay and, at the same time, notify them of the expected new delivery time. If the service is still not available within the new delivery time, **NSC** shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the client shall be refunded without delay.

A case of unavailability of the service in this sense shall include, in particular, the failure of **NSC's** suppliers to deliver to it on time, provided that **NSC** has concluded a corresponding covering transaction, neither **NSC** nor its supplier is at fault, or **NSC** is not obliged to procure the service in the specific case.

C.4.02

Any agreed delivery periods shall apply from the registered office of **NSC** in Schloß-Holte Stuckenbrock 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.4.03

Fix-term contracts must be expressly agreed as such in writing (Section 126b of the German Civil Code (BGB)).

C.4.04

Where a delivery period has been agreed, this shall be extended by a reasonable period if the client is in arrears with the provision of documents, approvals, dispatch instructions, notifications, advance payments or security to be provided by them. The same shall apply where a delivery date has been agreed.

C.4.05

A corresponding postponement of delivery dates or extension of delivery periods shall also take place if the prerequisites for the services to be provided by **NSC** – which the client is required to fulfil either themselves or through third parties – are not met in good time.

C.4.06

If the client requests changes to the order after the order has been confirmed, the delivery period shall not commence until **NSC** has confirmed the change. Any agreed delivery date shall be postponed accordingly.

C.4.07

The delivery period shall be extended appropriately in the event of unforeseen obstacles ("force majeure") which **NSC** is unable to avert despite exercising reasonable care under the circumstances of the case, e.g. pandemics, official orders, natural disasters, power cuts, blockades, war, terrorist attacks, cyber-attacks, strikes, lockouts and other industrial disputes, confiscation, embargoes, sanctions, total or partial failure of subcontractors, or other circumstances for which **NSC** is not responsible, unless, in exceptional cases, **NSC** has expressly assumed the procurement risk or provided a delivery guarantee in writing to the client. **NSC** shall inform the client of the occurrence of such an unforeseen event (force majeure) as soon as possible. If the impediment to performance is not merely temporary, both contracting parties are entitled to withdraw from the contract. In the event of withdrawal, mutual claims for performance shall lapse; the client shall pay reasonable compensation for any partial performance already rendered.

C.4.08

The occurrence of a delay in delivery on the part of **NSC** is determined in accordance with statutory provisions. In any event, however, a formal notice of default from the client is required.

C.4.09

In the event of a delay in delivery on the part of **NSC**, the client may claim lump-sum compensation for the loss suffered as a result of the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week of delay, up to a maximum of 5% of the delivery value of the goods delivered late. **NSC** reserves the right to prove that the client has suffered no loss at all or only a loss substantially lower than the above flat-rate amount. The client reserves the right to prove a higher loss resulting from the delay, provided that the delay in

delivery is due to wilful misconduct or gross negligence on the part of **NSC**.

C.4.10

The client's rights under clause C.9.02 of these General Terms and Conditions of Service and the statutory rights of **NSC**, in particular where the obligation to perform is excluded (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

C.4.11

If authorisations to be obtained by **NSC**, which are a prerequisite for lawful delivery, are delayed or not granted at all for reasons for which **NSC** is not responsible, **NSC** shall not be liable for this.

C.4.12

In cases where, in the context of repairs, warranty work, subsequent deliveries and the like, standard components cannot be used because, as agreed, the system in question is a bespoke design or because special components have been fitted, the relevant performance period to be granted to **NSC** shall be extended by the time required to procure the relevant components, assuming they were ordered in good time.

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 a partial delivery is made which the client can use independently, the client is obliged to make payment for the part already delivered in accordance with the terms of payment. The client is only entitled to a right of retention in respect of the partial amount due on the grounds of defects in that part already delivered.

C.6. Prices

C.6.01

Unless otherwise agreed, prices are quoted ex works from the registered office of **NSC** in Schloß-Holte Stuckenbrock, excluding packaging. Any customs duties, fees, taxes and other public levies shall be borne by the client.

C.6.02

In the case of sale by delivery („Versendungskauf“), the client shall bear the transport costs ex works or ex warehouse of **NSC** and the costs of any transport insurance that may be requested.

C.6.03

If packaging is required, **NSC** will package the goods according to the existing regulations and proceed according to Section 15 of the German Packaging Act (Verpackungsgesetz).

C.6.04

Prices -and the same applies to costs and interest- must be considered plus applicable value added tax. (VAT).

C.7. Terms of payment

C.7.01

The provisions of the Value Added Tax Act apply to advance payments.

C.7.02

Unless otherwise agreed, payments shall be due immediately. However, the client is granted a payment term of 10 days from receipt of the invoice. Once this date has passed, the debtor shall be in default of payment without the need for a separate reminder.

C.7.03

The client may only offset against undisputed or legally established claims. However, this restriction shall not apply if the counter-claim put forward by the client for set-off is in a synallagmatic relationship with the claim of **NSC**.

C.7.04

The client has no right of retention unless the client's counter-claim arises from the same contractual relationship and is undisputed or has been legally established.

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

C.7.05

If, after the conclusion of the contract, it becomes apparent (e.g. through an application to open insolvency proceedings) that **NSC's** claim for the purchase price is at risk due to the client's inability to pay, **NSC** shall be entitled, in accordance with the statutory provisions, to refuse performance and – where applicable, after setting a deadline – to withdraw from the contract (Section 321 of the German Civil Code (BGB)).

In the case of contracts for the manufacture of non-replaceable goods (bespoke items), **NSC** may declare its withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected.

NSC may in this case claim lump-sum damages, amounting to 10 per cent of the value of the unfulfilled order without the need for specific proof, whilst the client retains the right to prove that **NSC** has incurred no damage at all or damage less than the aforementioned lump sum. **NSC** is also entitled to claim compensation for any loss exceeding the flat-rate amount.

C.8. Inspection and reporting obligation

C.8.01

Claims for defects by the client are subject to the condition that the client has complied with their statutory obligations to inspect the goods and give notice of defects (Sections 377 and 381 of the German Commercial Code (HGB)) as well as the provisions set out in this Section C.8.

C.8.02

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

C.8.03

Clear defects must be immediately notified to **NSC** with a detailed description of the specific complaints, at the latest within 5 days following arrival at the final destination.

C.8.04

The client must also report hidden defects in writing immediately upon discovery, at the latest however within 5 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 client with respect to material defects and defects in title (including incorrect and short deliveries, faulty assembly or incorrect assembly instructions).

In all cases, the statutory provisions governing the sale of consumer goods (Sections 474 et seq. of the German Civil Code (BGB)) and the client's rights arising from separately issued guarantees, in particular those provided by the manufacturer, remain unaffected.

Claims for recourse against suppliers are excluded if the defect was caused only by further processing or installation at the client's premises or by a third party, or if the client should have discovered the defect prior to further processing as part of their obligations to inspect the goods and give notice of defects, but failed to do so in good time.

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 transfer of goods 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 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.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

Expenses required for inspection or rectification, in particular for transport, weighing, labour and

material costs (Section 439 para. 2 of the German Civil Code (BGB)) as well as, where applicable, removal and reinstallation costs (Section 439 para. 3 BGB) shall be borne or reimbursed by **NSC** in accordance with the statutory provisions, provided that a defect actually exists.

However, in the event that equipment supplied by **NSC** is installed or operated outside the client's head office, even though the relevant contract was concluded with a branch or head office of the client located in Germany, the client shall bear the additional costs arising from any warranty measures to be carried out by **NSC** that entail transport costs, travel expenses and other costs, which extend beyond the borders of Germany.

C.9.12

If the client requests the rectification of an alleged defect and it transpires during the inspection that there is in fact no defect for which **NSC** is responsible, the client shall reimburse **NSC** for the expenses incurred as a result (in particular inspection, transport and labour costs), unless the client is not responsible for the absence of the defect and could not have identified this even by exercising commercial due care.

C.9.13

The client must allow **NSC** the necessary time and opportunity to carry out rectifications and replacement deliveries owed under the warranty. Only in urgent cases where operational safety is at risk and to prevent disproportionately large damage – in which case **NSC** must be notified immediately (if possible, in advance) – or if **NSC** is in default regarding the rectification of a defect, shall the client have the right to rectify the defect themselves or through third parties and to demand reimbursement of the necessary costs from **NSC**.

C.9.14

In cases where **NSC** procures third-party services on behalf of and for the account of the client, the third party alone shall be liable under the warranty. Unless otherwise agreed, **NSC** shall not provide any advice to the client regarding the selection of such third-party services. Should the client wish to

receive such advice, this shall only be provided on the basis of a separate agreement to be concluded and in return for remuneration.

C.9.15

If the subsequent performance has failed, or if a reasonable period to be set by the client for subsequent performance has expired without result (Section 323 para. 1 or Section 281 para. 1 of the German Civil Code (BGB)) or is dispensable under the statutory provisions (Section 323 para. 2 or Section 281 para. 2 BGB) or may be refused by **NSC** pursuant to Section 439 para. 4 BGB, or is unreasonable for the client, the client may withdraw from the contract or reduce the purchase price. However, in the case of a minor defect, there is no right of withdrawal.

C.9.16

Claims by the client for reimbursement of expenses pursuant to Section 445a para. 1 of the German Civil Code (BGB) are excluded, unless the final contract in the supply chain is a sale of consumer goods (Sections 478, 474 BGB) or a consumer contract for the provision of digital products (Sections 445c, sentence 2, 327 para. 5, 327u BGB). The client's claims for damages or reimbursement of futile expenditure (Section 284 BGB) are also excluded in the event of defects in accordance with Clause C.10.01 and shall only apply in the cases set out in Clause 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;
- in the case of claims by the client arising from a delay in delivery, to which the special provision in clause C.4.09 takes precedence;
- 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 of the proportionate share of the purchase price attributable to them.

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 event of storage at **NSC**, **NSC** may charge 0.5% of the invoice amount per month, subject to a minimum of €30, plus a further €25 for every second full cubic metre of goods per month, up to a

maximum of 5% of the invoice amount.

The right to prove greater loss and the statutory claims of **NSC** (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the flat-rate charge shall be set off against any further monetary claims. The client is entitled to prove that the claim has not arisen or has arisen in a substantially lower amount.

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 15 % of the agreed price as a fixed fee. The client retains the right to furnish proof of a lower percentage. This claim shall not apply if the client is not at fault for the failure to take delivery of the ordered goods.

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

The client is not permitted to pledge or transfer ownership of the goods delivered subject to retention of title as security. However, the client is entitled to resell, process or incorporate the goods subject to retention of title in the ordinary course of business, provided that no event triggering realisation (see C.13.04) has occurred.

C.13.04

In the event of the client's breach of contract, in particular in the event of default in payment, **NSC** shall be entitled to withdraw from the contract (event of realisation). In the event of realisation, **NSC** may demand the return of the goods subject to retention of title.

C.13.05

If, following withdrawal, **NSC** takes back the goods subject to retention of title and these can be resold as new in the ordinary course of business, the client shall be liable, without the need for further proof, for 10 per cent of the net invoice value of the goods as a flat-rate charge for return and reprocessing costs. The client reserves the right to prove that **NSC** has incurred no costs or significantly lower costs. In all other respects, the compensation to be claimed for any deterioration in the goods shall be governed by the statutory provisions.

C.13.06

NSC reserves the right to claim further damages from the client.

C.13.07

The processing and treatment of the goods supplied by **NSC** shall always be carried out on behalf of **NSC**, so that the goods remain the property of **NSC** in every state of processing and treatment, and also as finished goods, to the exclusion of the consequences of Section 950 of the German Civil Code (BGB). If the goods subject to retention of title are processed together with other items also supplied to the exclusion of the legal consequences of Section 950 of the German Civil Code (BGB), **NSC** shall acquire at least co-ownership of the new item in the ratio of the invoice value of the goods from **NSC** to the invoice value of the other processed items.

C.13.08

The client hereby assigns in advance to **NSC** all claims arising from the resale, processing, installation and other utilisation of our goods. Insofar as the products sold, processed or installed by the client contain items which are not owned by the

client and for which other suppliers have likewise agreed a retention of title with a disposal clause and advance assignment, the assignment shall be made in the amount of **NSC's** co-ownership share, which corresponds to the fraction of the claim, otherwise in full.

C.13.09

The Client's authority to collect the debt, which remains in force despite the assignment, shall lapse upon the occurrence of an event triggering realisation (see C.13.04).

C.13.10

NSC shall release goods subject to retention of title, as well as any items or claims taking their place, insofar as their value exceeds the amount of the secured claims by more than 50 %. The selection of the items to be released shall be at the discretion of **NSC**.

C.14. Place of performance and fulfilment

C.14.01

The place of performance and fulfilment for the deliveries and services to be provided by **NSC** is **NSC's** registered office in Schloß Holte-Stukenbrock. This shall also apply where **NSC** carries out or organises the transport itself.

C.14.02

The place of performance and fulfilment for the services to be provided by the client, in particular for their payment obligations, is **NSC's** registered office in Schloß Holte-Stukenbrock.

C.15. Headings and Definitions

C.15.01

Il 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).

A stricter written form (handwritten signature) is only required where this is mandatory by law or has been expressly agreed between the parties.

C.16. Jurisdiction and Governing Law

C.16.01

The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship between the client and **NSC** shall be – depending on subject-matter jurisdiction – the Gütersloh Local Court or the Bielefeld Regional Court, provided that the contracting party is a merchant in terms of the German Commercial Code (HGB), a corporate body under public law or a special fund under public law. Mandatory statutory provisions regarding exclusive places of jurisdiction remain unaffected by this provision.

NSC shall, however, remain entitled to bring proceedings against the client at the client's general or statutory place of jurisdiction.

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.