

## General Terms and Conditions of Delivery

### 1. Scope

- 1.1 These General Terms and Conditions of Delivery ("**GTCD**") shall apply to all contracts for the sale and/or delivery of movable goods by us, Noyes Technologies GmbH (hereinafter "**Noyes**" or "**we**"/"**us**") to our customers ("**Customer(s)**"), regardless of whether we manufacture them ourselves or purchase them from suppliers.
- 1.2 Unless otherwise agreed, the GTCD in the version valid at the time of the Customer's order or, in any case, in the version last notified to the Customer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- 1.3 Our GTCD apply exclusively. Deviating or conflicting terms and conditions shall not be recognized by us unless we have expressly agreed to them.
- 1.4 Individual agreements and specifications in our order confirmation shall take precedence over the GTCD. In case of doubt, commercial clauses shall be interpreted in accordance with the *Incoterms 2020* issued by the International Chamber of Commerce in Paris (ICC).
- 1.5 Legally relevant declarations by the Customer (such as setting of deadlines, notification of defects or withdrawal) must be made in writing or text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- 1.6 References to the applicability of statutory provisions shall only have clarificatory meaning. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCD.

### 2. Conclusion of Contract

- 2.1 Our offers are subject to change without notice (*freibleibend*) and are non-binding, unless they are expressly designated as binding or include a specific acceptance period.
- 2.2 The order by the Customer shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us. Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery to the Customer.
- 2.3 The legal relationship between us and the Customer shall be exclusively governed by the purchase contract concluded in writing, including these GTCD. This purchase contract fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal commitments on our part prior to the conclusion of the purchase contract are legally non-binding and verbal agreements between the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties in each case.
- 2.4 Information on the object of the delivery or service (e.g. weights, dimensions, utility values, resilience, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless

usability for the contractually intended purpose requires exact conformity. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

- 2.5 We retain ownership or copyright (as the case may be) of all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and aids made available to the Customer. The Customer may not make these items available to third parties, either as such or in terms of content, disclose them, use them themselves or through third parties, or reproduce them without our express consent. At our request, they shall return these items in full and destroy any copies made if they are no longer required by them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of data provided electronically for the purpose of normal data backup.

### **3. Scope of Services**

- 3.1 The content and scope of the services and deliveries to be provided by us are set out in the order or the offer (as the case may be) (cf. Sec. 2.1 and 2.2).
- 3.2 Insofar as the services include the delivery of software, the software shall, unless expressly agreed otherwise, only be provided in object code, i.e. the source code shall not be made available.
- 3.3 The agreed quality of the subject matter of the contract to be delivered (hereinafter "**Contractual Item**") results conclusively from the product descriptions supplied, the descriptions of the functionalities contained in any user documentation as well as from the specification of the contractual use of the Contractual Item made in the order or the offer (as the case may be).
- 3.4 The technical data, specifications, explanations of the functions and possible uses as well as other information in the product descriptions and user documentation supplied are to be understood exclusively as a description of the quality within the meaning of Sec. 434 para. 1 sent. 1 of the German Civil Code (*Bürgerliches Gesetzbuch* – "**BGB**") and not as an independent warranty (*selbständige Garantie*), guarantee of quality or durability (*Beschaffenheits- oder Haltbarkeitsgarantie*).
- 3.5 Statements made by us regarding the Contractual Item shall only be independent warranties (*selbständige Garantien*), guarantees of quality or durability (*Beschaffenheits- oder Haltbarkeitsgarantien*) in the legal sense if they are made in writing by our management and are expressly designated as "independent warranty", "guarantee of quality" or "guarantee of durability".

### **4. Delivery Times, Force Majeure**

- 4.1 The delivery period is agreed individually or stated by us upon acceptance of the order. If this is not the case, the delivery period shall be approx. eight weeks from conclusion of the contract. If shipment has been agreed, delivery periods and delivery dates refer to the

time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

- 4.2 If a fixed delivery date has been agreed, this shall not lead to the existence of an absolute fixed transaction (*absolutes Fixgeschäft*).
- 4.3 We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, epidemics, strikes, lawful lockouts, shortages of labor, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which we are not responsible. If such events make the delivery or performance considerably more difficult or impossible for us and if the hindrance is not only of temporary duration, we shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or performance deadlines shall be extended or the delivery or performance deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. If the Customer cannot reasonably be expected to accept the delivery or performance as a result of the delay, they may withdraw from the contract by giving us written notice without undue delay.
- 4.4 The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Customer is required. If we are in default of delivery, the Customer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week of the delay, but in total not more than 5% of the delivery value of the delayed Contractual Item. We reserve the right to prove that the Customer has not suffered any damage or that the damage is significantly less than the aforementioned lump-sum. Sec. 13 remains unaffected.

## **5. Delivery Modalities**

- 5.1 Unless otherwise agreed, deliveries shall be made EXW.
- 5.2 The place of performance for all obligations arising from the contractual relationship is the registered seat of Noyes, unless otherwise specified. If we also owe the assembly, the place of performance with regard to the assembly service is the place where the assembly is to take place.
- 5.3 Unless otherwise agreed, the Contractual Item shall be shipped at the Customer's expense. The mode of shipment and the packaging are subject to our dutiful discretion.
- 5.4 We are entitled to make partial deliveries if the partial delivery is usable for the Customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Customer does not incur any significant additional expenses or costs as a result (unless we agree to bear these costs).
- 5.5 The risk of accidental loss and accidental deterioration of the Contractual Item shall pass to the Customer at the latest upon handover. In the event of agreed shipment, however, the risk shall already pass to the Customer upon handover to the forwarding agent, carrier

or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if we have assumed other services (e.g. assembly). If the shipment or the handover is delayed due to a circumstance the cause of which lies with the Customer, the risk shall pass to the Customer from the day on which the Contractual Item is ready for shipment and we have notified the Customer of this. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work (*Werkverträge*) shall also apply *mutatis mutandis* to any agreed acceptance.

5.6 We shall insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Customer and at the Customer's expense.

5.7 If the Customer is in default of acceptance, fails to perform an act of cooperation or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses.

## **6. Assembly**

Insofar as our contractually agreed scope of services also includes the assembly of the Contractual Item, we shall carry this out at the place of performance of the assembly service (Sec. 5.2) in coordination with the Customer.

## **7. Grant of Rights**

The Customer shall receive the simple (non-exclusive) right (*einfaches Nutzungsrecht*) to use any software supplied, in particular operating software installed on hardware, on a permanent basis as part of the hardware specified in the order.

## **8. Prices, Terms of Payment**

8.1 Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse (*ab Lager*), plus statutory value added tax. If the agreed prices are based on our list prices and the delivery is to be made more than four months after conclusion of the contract, our list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

8.2 In the case of a sales shipment, the Customer shall bear the transport costs ex warehouse (*ab Lager*) and the costs of any transport insurance requested by the Customer (cf. Sec. 5.6). Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

8.3 Invoice amounts are to be paid within 14 days without any deduction, unless otherwise agreed. The date of receipt by us shall be decisive for the date of payment. If the Customer fails to make payment when due, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.

8.4 The Customer shall only be entitled to rights of set-off or retention to the extent that their claim has been established by a court or is undisputed. In the event of defects in the

Contractual Item, the Customer's counter rights, in particular in accordance with Sec. 11 and 12, shall remain unaffected.

- 8.5 We shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and as a result of which payment of our outstanding claims by the Customer under the respective contractual relationship is jeopardized.

## **9. Retention of Title**

- 9.1 We retain title to the Contractual Item until all our present and future claims arising from the purchase contract have been paid in full.
- 9.2 The Contractual Item subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Customer must notify us immediately in writing if an application is made to open insolvency proceedings or in case of any attachments by third parties (e.g. seizures) on the Contractual Item.
- 9.3 The Customer must treat the Contractual Item subject to retention of title with care. They must sufficiently insure it at their own expense against fire, water and theft damage at reinstatement value.
- 9.4 In the event of conduct by the Customer in breach of contract, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the retention of title. The demand for surrender does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the surrender of the Contractual Item and to reserve the right of withdrawal. If the Customer does not pay the purchase price due, we may only assert these rights if we have previously set the Customer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.
- 9.5 The Customer shall bear the transport costs incurred for the return. We shall be entitled to realize any Contractual Items subject to retention of title taken back by us. The proceeds of the realization shall be offset against the amounts owed to us by the Customer after we have deducted a reasonable amount for the costs of the realization.

## **10. Obligations of the Customer**

If the parties have also agreed on assembly, the Customer shall provide in good time all cooperation services that are necessary and appropriate for assembly by us.

## **11. Defects as to Quality**

- 11.1 The statutory provisions shall apply to the rights and claims of the Customer in the event of defects as to quality, unless otherwise stipulated in the following provisions.
- 11.2 The starting point of our liability for defects shall be the subjective requirements to the Contractual Item within the meaning of Sec. 434 para. 2 BGB, i.e. the quality agreed with the Customer (such as, in particular, agreed product specifications, cf. also Sec. 3.3) and

the presupposed use of the Contractual Item in accordance with Sec. 11.5 (as well as agreed accessory(s) and instructions in accordance with Sec. 434 para. 2 no. 3 BGB). Only if and to the extent that no deviating agreements have been made in the above sense, objective requirements pursuant to Sec. 434 para. 3 BGB can constitute a defect.

- 11.3 Insofar as the Contractual Item contains digital elements or in the case of other digital content, we shall only owe provision and, if applicable, updating of the digital content insofar as this expressly results from a quality agreement pursuant to Sec. 11.2.
- 11.4 Deviations from agreed quality which represent tolerances customary in production in accordance with the recognized rules of technology shall not constitute a defect.
- 11.5 A use of the Contractual Item presupposed by the Customer can only be the basis for a liability for defects within the meaning of Sec. 434 para. 2 no. 2 BGB if the Customer has notified us of this intended use prior to the conclusion of the contract and we have agreed to this intended use. Reference is made to Sec. 2.4 in addition.
- 11.6 If the parties have not agreed otherwise, the Contractual Item complies with the contract if it complies with the provisions of the country of dispatch. Normative requirements in countries other than the country of dispatch must be expressly agreed in writing.
- 11.7 In order to safeguard their claims for defects, the Customer shall comply with the statutory duties of inspection and notification pursuant to Sec. 377 et seq. German Commercial Code (*Handelsgesetzbuch* – “HGB”), taking into account the following regulations: Obvious defects or other defects which would have been recognizable in the course of an immediate, careful examination shall be deemed to have been approved by the Customer if we do not receive a written notice of defect within seven working days after delivery. For other defects, this period shall apply from the time of discovery. If the Customer fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. If and insofar as the Contractual Item is intended for installation or assembly, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, the Customer shall in particular have no claims for compensation of the dismantling and installation costs.
- 11.8 In the event of defects as to quality, we shall, at the Customer's request, provide supplementary performance (*Nacherfüllung*) at our discretion by remedying the defect (*Nachbesserung*) or by delivering an item free of defects (*Neulieferung*). The Customer may, within a reasonable period of time, demand a type of supplementary performance (*Nacherfüllung*) other than the one selected by us if the selected type of supplementary performance (*Nacherfüllung*) is unreasonable for them. Our rights according to Sec. 439 para. 4, 275 para. 2 and 3 BGB remain unaffected.
- 11.9 Supplementary performance (*Nacherfüllung*) shall not include the dismantling, removal or deinstallation of the Contractual Item, nor the installation, attachment or fitting of a defect-free Contractual Item if we were not originally obliged to perform these services.

- 11.10 The Customer shall give us the time and opportunity required for the supplementary performance (*Nacherfüllung*) owed, in particular to make the Contractual Item complained about available to us. In the event of a replacement delivery, the Customer shall return the defective Contractual Item to us at our request in accordance with the statutory provisions; however, the Customer shall not have a claim for return.
- 11.11 In the event of defects as to quality in software, we shall be entitled to provide supplementary performance (*Nacherfüllung*) by supplying a patch, update or new program version of the software. We shall be entitled to deliver a new program version of the software if it contains the same scope of functions as the version of the software that is the subject matter of the contract and its adoption is reasonable for the Customer and does not lead to significant disadvantages. We shall be entitled to show the Customer temporary possibilities for avoiding errors and to eliminate the defect later by supplying the next update or new program version of the software released by us, provided that this is reasonable for the Customer. If we make use of this right, this shall be taken into account when determining the appropriateness of the period for supplementary performance (*Nacherfüllung*) in accordance with Sec. 11.12 below. The Customer shall observe the instructions for action given to them by us by telephone, in writing or electronically within the scope of supplementary performance (*Nacherfüllung*). We may issue such instructions to the Customer in particular with regard to the installation of patches, updates or new program versions of the software provided for the purpose of supplementary performance (*Nacherfüllung*) as well as to point out temporary possibilities for avoiding errors.
- 11.12 If the Customer sets us a reasonable deadline for supplementary performance (*Nacherfüllung*) and if supplementary performance (*Nacherfüllung*) fails within this period, the Customer shall be entitled to the further rights to a reduction in price or, at its option, to withdraw from the contract and, in addition, if we are responsible for the defect, to claims for damages in lieu of performance or for reimbursement of futile expenses within the meaning of Sec. 284 BGB. However, the Customer shall only be entitled to withdraw from the contract and to claim damages instead of the entire performance in the event of significant defects. Sec. 13 remains unaffected.
- 11.13 After the fruitless expiry of a period set for supplementary performance (*Nacherfüllung*) in accordance with the foregoing Sec. 11.12 the Customer shall declare to us in writing within a reasonable period of time whether they will continue to demand supplementary performance (*Nacherfüllung*) or whether they will assert the further rights set out in Sec. 11.12 sent. 1. If the Customer continues to demand supplementary performance (*Nacherfüllung*) and we thereupon give notice thereof without undue delay, the Customer shall grant us a further reasonable period for this purpose.
- 11.14 In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Customer shall have the right to remedy the defect themselves and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be notified without undue delay of such self-execution, if possible in advance. The right of self-execution shall not exist if we would be entitled to refuse a corresponding supplementary performance (*Nacherfüllung*) in accordance with the statutory provisions.

- 11.15 If, in the course of an error analysis in connection with defects reported by the Customer, it turns out that claims or rights of the Customer due to defects do not exist, we shall be entitled to charge the Customer for the expenses incurred in the course of the investigation in accordance with our current price list, provided that the Customer has recognized or negligently failed to recognize that a defect does not exist, but that the cause of the defect complained by the Customer originates from the Customer's own sphere of responsibility.
- 11.16 We shall not be liable if work on or modifications of the Contractual Item have been carried out by the Customer or by third parties commissioned by the Customer, unless the Customer proves that any defects that have occurred are not attributable to this.
- 11.17 Claims of the Customer due to a defect shall become statute-barred in twelve months. The limitation period shall commence upon delivery or, if acceptance has been agreed, upon acceptance. In the event of intentional or grossly negligent breaches of duty, fraudulent concealment of a defect, claims *in rem* for surrender by third parties within the meaning of Sec. 438 para. 1 no. 1 BGB, personal injury, claims under the German Product Liability Act (*Produkthaftungsgesetz*) and the assumption of a quality guarantee, the statutory provisions on the statute of limitations shall apply; in the event of an assumption of a guarantee, however, this shall only apply insofar as nothing to the contrary results from the respective guarantee agreement.
- 11.18 Any delivery of used items agreed with the Customer in individual cases shall be made under the exclusion of any warranty for defects as to quality.

## **12. Defects of Title**

- 12.1 The statutory provisions shall apply to the rights and claims of the Customer in the event of defects of title, unless otherwise stipulated in the following provisions.
- 12.2 If a third party asserts an infringement of property rights against the Customer, the Customer shall notify us without undue delay in writing, authorize us to conduct the legal dispute and settlement negotiations with the third party at our own expense and as far as possible on our own, take legal action only with our consent and provide us with all reasonable assistance and the necessary information and documents available to the Customer.
- 12.3 In the event that the rights of third parties should be infringed by the Contractual Item, we shall, at our discretion, provide supplementary performance (*Nacherfüllung*) by (i) modifying the Contractual Item in such a way that it no longer infringes the rights, while providing a corresponding performance and maintaining the contractual scope of functions for the Customer, or (ii) acquiring for the Customer a right of use sufficient for the purposes of the contract for the continuation of the use, or (iii) replacing the Contractual Item with one which is equivalent for the Customer with regard to the agreed quality, provides a corresponding performance and does not result in any significant disadvantages for the Customer, or (iv) in the case of software, delivering a new program version whose use in accordance with the contract does not infringe any third-party property rights, which contains the same scope of functions as the previous version and



whose adoption is reasonable for the Customer and does not result in any significant disadvantages for the Customer.

- 12.4 In all other respects, the provisions on defects as to quality in Sec. 11.11, 11.12, 11.13, 11.16 and 11.17 shall apply *mutatis mutandis* in the event of defects of title.

### **13. Limitations of Liability**

- 13.1 In accordance with the statutory provisions, we shall be liable without limitation for damages arising from injury to life, limb or health, for damages based on intent or gross negligence, as well as for damages that fall within the scope of protection of a given guarantee, quality or durability guarantee (*Beschaffenheits- oder Haltbarkeitsgarantie*), unless otherwise stated in the respective guarantee agreement.
- 13.2 For damages other than the aforementioned, which are based on a slightly negligent breach of essential contractual obligations (cardinal obligations (*Kardinalpflichten*)), we shall be liable limited to compensation for the foreseeable damage typical for the contract. Essential contractual obligations are those whose breach jeopardizes the achievement of the purpose of the contract, whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer regularly relies.
- 13.3 In all other respects, any further liability for damages other than those referred to in Sec. 13.1, which are based on a slightly negligent breach of other obligations than those mentioned in Sec. 13.2, is excluded.
- 13.4 Liability under the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected.
- 13.5 The above limitations of liability shall also apply with regard to the personal liability of our employees, vicarious agents, legal representatives and bodies.

### **14. Subcontractor**

We are entitled to use third parties to fulfill our contractual obligations.

### **15. Confidentiality**

- 15.1 Confidential information is the information expressly designated as confidential by the party providing the information and such information whose confidentiality is clearly evident from the circumstances of its provision ("**Confidential Information**"). Excluded from the confidentiality obligation is such information

- which were demonstrably already known to the recipient at the time the contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or administrative orders;
- which are public knowledge at the time of the conclusion of the contract or are made public thereafter, insofar as this is not based on a breach of this contract;
- which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient obligated to

disclose shall inform the other party in advance and give it the opportunity to object to the disclosure.

- 15.2 The parties shall treat all Confidential Information as confidential. Any use of the Confidential Information shall be limited to use in connection with the contract. The receiving party shall refrain from commercially exploiting or imitating (e.g. by way of "reverse engineering") the Confidential Information outside this purpose itself or through third parties, in particular from applying for industrial property rights to the Confidential Information disclosed.
- 15.3 The parties shall only grant access to Confidential Information to those consultants who are subject to professional confidentiality or to whom obligations corresponding to the confidentiality obligations of these GTCD have previously been imposed. In addition, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of the contract and shall also oblige these employees to maintain confidentiality to the extent permitted by employment law for the period after their departure.
- 15.4 To the extent required by applicable law, the recipient shall be entitled to disclose and share Confidential Information. To the extent permitted by law, the recipient will inform the other party before disclosing Confidential Information.
- 15.5 The obligation to maintain confidentiality shall apply for the term of the contract and for a period of three years after its termination.

## **16. Final Provisions**

- 16.1 These GTCD and the contractual relationship between us and the Customer shall be governed by German law excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods, and is to be interpreted exclusively consistent with German law and usage of terminology. Where these GTCD contain a German term as a translation for an English term, the German term shall be binding for the interpretation.
- 16.2 The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Munich if the Customer is a merchant, a legal entity under public law or a special fund under public law (*öffentlich-rechtliches Sondervermögen*). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCD or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

**Status of these GTCD: May 2022**