

# GENERAL TERMS OF SALE AND DELIVERY OF NEUGART GMBH



## 1. Applicability

### 1.1

These General Terms of Sales and Delivery apply only to customers who are entrepreneurs within the meaning of § 14 BGB (German Civil Code) or legal entities under public law or special funds under public law (hereinafter designated as "customers").

### 1.2

Unless agreed upon otherwise in writing, the following terms and conditions apply exclusively to all - also future - deliveries and services (designated only as "deliveries" in the following). Our customers' terms and conditions of business apply only if we agree to them in writing.

## 2. Quotes

### 2.1

Our quotes are nonbinding - unless indicated otherwise. Contracts exist only after receipt of our written order confirmation or delivery.

### 2.2

In particular, our employees are obliged to confirm in writing verbal agreements or commitments that go beyond the content of the written contract or alter these General Terms of Sales to our disadvantage.

### 2.3

The illustrations, weights, and dimensions provided with a quote or other sales documents are only approximate values unless designated expressly as binding.

## 3. Price and payment

### 3.1

Our prices are FCA our plant Kippenheim, Keltenstraße 16 Incoterms® 2020 net in EUR, exclusive of packaging and applicable sales tax.

### 3.2

Payment in full shall be made to the account stated on the invoice within 30 days of the invoice date, without any deductions, charges, or fees. Payments are only deemed to have been received when we have the funds at our disposal in our bank.

### 3.3

In the event of delayed payment, we shall charge interest from the due date in the amount of 9 percentage points above the current discount rate, but no less than 10 % minimum.

### 3.4

Withholding payments or offsetting claims is permissible only to the extent that the claims are undisputed, acknowledged or legally binding. Furthermore, the right of retention is limited to the counterclaims arising from the same contract.

## 4. Assumption of risk and partial deliveries

### 4.1

Risk transfers to the customer on the basis of delivery FCA our plant Kippenheim, Keltenstraße 16 Incoterms® 2020. In cases where shipment has been delayed for reasons beyond our control, risk passes when we have informed the customer that the goods are ready for shipment, including when we have utilized other services, e.g. shipping costs or delivery by our freight forwarder.

### 4.2

Unless agreed otherwise, we shall arrange for transport insurance at the cost of the purchaser. The cost of insurance is a flat fee of 1 ‰ of the order value.

### 4.3

Partial deliveries are permissible to a reasonable extent.

## 5. Delivery time

### 5.1

The delivery time shall begin upon receipt of the order confirmation, but not before clarification of all details for processing the order and receipt of the agreed-upon down payment or payment security. The delivery date is deemed to have been met if the goods are ready for shipment.

### 5.2

Our delivery obligation is subject to timely and correct delivery from our suppliers ("self-supply"). Insofar as we are not responsible for incorrect or delayed delivery from our suppliers, we shall not be held responsible for losses or damages and we are released from our liability. We are obligated to inform the customer immediately in case of non-availability and to reimburse the customer for any amounts that the customer has already paid.

### 5.3

In the event of late delivery, our liability in cases of simple neglect shall be limited to 0.5% for every full week of delay and to a maximum total amount of 5% of the net invoice value of the delayed portion of the delivery. Claims for damages in lieu of performance, pursuant to section 10 shall remain unaffected. The customer shall inform us no later than upon conclusion of the contract about any contractual penalty liabilities to his customer.

### 5.4

If shipment or delivery of the merchandise to the customer is delayed for a reason resulting from circumstances beyond our control (e.g. a short time slot at the customer for delivery or acceptance of goods), we shall be entitled to invoice the customer the costs for storage by our freight forwarder in the amount of at least 0.5% of the invoiced value of the stored shipment per month.

## 6. Force majeure

### 6.1

Unforeseen and unavoidable events beyond our responsibility (e.g. force majeure, strikes and lockouts, disruption of operations, difficulties procuring materials and energy supply, transport delays, lack of workers, energy and raw materials, actions of public authorities, as well as difficulties in obtaining authorizations, in particular, import and export licenses, etc.) extend the delivery period for the length of the disturbance and its effects. This applies even if the obstacles occur at our own suppliers or during an already existing delay.

### 6.2

Should the difficulty extend beyond temporary, both parties of the contract have the right to withdraw. Claims for damages are excluded in the cases set out in section 6.1.

## 7. Packaging

### 7.1

Except for Euro pallets, we do not take back our packaging originating in Germany, nor at private end-users in the sense of the Packaging Regulation (VerpackG); the customer shall ensure the proper disposal of such packaging at its own expense in compliance with the provisions of the Packaging Regulation (VerpackG). The customer shall release us from the obligation to take back the packaging pursuant to § 15 of the Packaging Regulation (VerpackG) as well as from the disposal obligation stated in the Packaging Regulation (VerpackG) and from all claims of third parties in this regard. The customer shall receive appropriate compensation for this. This shall be taken into consideration as agreed when invoicing the customer.

### 7.2

The return of Euro pallets can also take place at one of the next deliveries, also in exchange for other pallets of equal value.

## 8. Retention of title

### 8.1

We reserve the right to retain title to the delivered goods until complete payment of the purchase price.

### 8.2

The customer is obligated to treat the goods subject to retention of title carefully; in particular, the customer agrees to insure them adequately at his own cost for the original value against loss or damage. The customer shall furnish proof of the insurance policy and of regular payment of premiums whenever required to do so. The customer herewith cedes to the supplier any claims from the insurance policies in advance, subject to the subsequent condition that the customer acquires full title. We herewith accept such assignment.

### 8.3

The treatment and processing of the reserved goods by the customer are always done on our behalf. In the case of combi-

nation with other goods, we shall acquire co-ownership in the new goods in proportion of the invoice value of the reserved goods to the invoice value of the other materials.

The customer shall be entitled to sell the new goods in the course of normal business. Furthermore, the customer herewith assigns to us all accounts receivable in the ratio of the invoice value of our reserved goods to the invoice value of processing and other materials together with all ancillary rights arising from subsequent resale. If the assigned accounts receivable or claim against a third party is included in a current account, we shall be entitled to rescind the contract and charge the customer for the costs incurred up to that date, including loss of profit. We herewith accept such assignment.

### 8.4

The customer shall have the right to collect any receivables assigned to us as long as the customer satisfies all payment obligations to us arising out of the proceeds collected.

### 8.5

If the customer fails to fulfill its payment obligations, we may revoke permission for resale and demand that the customer disclose to us the assigned receivables and the respective debtors, provide all the information and relevant documents necessary to assert our rights, and inform the debtors of the assignment. Taking back the reserved goods does not imply withdrawal from the contract. If we declare that we are withdrawing from the contract, then we have the right to disposal of the goods at our discretion.

### 8.6

The customer must notify us without delay of third-party actions against the reserved goods. The customer shall bear the costs incurred in resisting such claims unless they can be recovered from the third party.

### 8.7

Should the value of the securities exceed our claims by more than 10%, we shall release securities of our choice at the request of the customer.

## 9. Liability for defects

### 9.1

The customer is entitled to make claims on the basis of defects in the delivered goods only after having fulfilled his legal duty to examine the goods and to give notice of defects.

### 9.2

The customer must make a note of shipping damage on the consignment note upon receipt of the goods and notify us immediately. Later complaints shall not be recognized.

### 9.3

Violation of third party trademark rights is a defect only when



these rights are valid in the Federal Republic of Germany.

#### **9.4**

Unless otherwise agreed, variations in quality, color, size, or weight that are minor or customary in the trade shall not be deemed defects.

#### **9.5**

In the case of properly filed and substantiated notices of defect, we have the option either to remedy the defect or provide replacement. In the event that said remedial action should fail, be unjustifiably refused or unduly delayed, the customer shall have the option, upon expiration of a reasonable remedial time period, to demand a price reduction or – in case of significant defects – withdraw from the contract and, in accordance with section 10. demand compensation in place of delivery.

Expenses resulting from the purchased goods having been taken to a location other than the customer's main place of business after delivery will not be assumed.

### **10. General liability**

#### **10.1**

We shall be held liable in cases of malicious intent or gross negligence, fraudulent concealment of defects, in cases of injuries to life, body or health or under the German Product Liability Act to the extent allowed by law. Where a guarantee has been given, we are liable within the scope of a guarantee commitment.

#### **10.2**

Otherwise, in cases of minor negligence we are only liable: for breach of a major contractual obligation the proper fulfillment of which makes the due performance of the contract possible in the first place and on the fulfillment of which the customer regularly relies and may rely and – unless regulated otherwise in section 5.3 – are limited to the replacement of such foreseeable and typical damage. Our liability is excluded in all other cases.

#### **10.3**

Defect claims by the customer are subject to a limitation of 24 months following the transfer or risk, other claims to 24 months after the beginning of the statutory period of limitation. Notwithstanding sentence 1 of this section 10.3, the statutory limitation periods shall apply in the case of our liability in the event of our assumption of a guarantee in the amount of the guarantee commitment and for fraudulent concealment of a defect as well as in the case of claims for damages on the basis of the German Product Liability Act, for injury to life, body or health, and for premeditated or a grossly negligent infringement of contractual obligations.

### **11. Place of performance, court of jurisdiction, choice of law, severability**

#### **11.1**

The place of performance for all aspects of the delivery contracts is our place of business.

#### **11.2**

The place of jurisdiction for all disputes arising from the delivery contract is our place of business. We are, however, also entitled to commence proceedings at the court with jurisdiction at the customer's place of business.

#### **11.3**

German law is deemed to apply. Application of the UN Convention on the International Sale of Goods dated 11.04.1980 is explicitly excluded.

#### **11.4**

Should individual provisions of these conditions be found to be or become partly or wholly unenforceable or invalid, the other provisions of these terms and conditions shall remain valid.