

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of Niebuhr Gears A/S

1. General information

- 1.1 The General Terms and Conditions of Sale and Delivery (September 1988) below shall apply to all supplies delivered or to be delivered by Niebuhr Gears A/S (hereinafter called 'NG') insofar as these have not been derogated from in part or in whole by another written agreement.
- 1.2 Special purchase conditions or specific requirements for the purchased product on the part of the Buyer, stated in, for instance, the Buyer's general purchase conditions, in the Buyer's order or written confirmation, shall not be binding on NG, unless NG has accepted such special terms in writing.

2. Advice

- 2.1 Any advice provided by NG which is not specifically related to the purchased product shall be considered advice of an informative nature only and can therefore not impose any consultants' liability on NG.

3. Entering into a contract

- 3.1 A final purchase agreement is not entered into until NG has either forwarded a written order confirmation to the Buyer (and only on the conditions stated in the order confirmation) or has delivered the purchased product, whichever comes first.

4. Technical specifications, etc.

- 4.1 When, under the purchase agreement, the Buyer shall provide NG with detailed specifications to be met by the purchased product, NG shall be entitled to prepare the specifications required for the completion of the purchased product if the Buyer has not provided NG with the necessary information within a reasonable period of time.
- 4.2 If the specifications provided by the Buyer prove difficult to implement, or if, in the opinion of NG, it will be unjustifiable or inappropriate to implement them, NG shall be entitled to carry out the changes to the purchased product which NG consider necessary and reasonable after having informed the Buyer thereof.

5. Trade terms

- 5.1 The trade term shall be 'Ex Works (Inco Terms, 2000)' which is, however, derogated from such that the Buyer shall pay for the packaging required in connection with the Buyer's physical takeover of the purchased product.

6. Time of delivery

- 6.1 No agreed time of delivery or time of delivery indicated by NG, or duration of the delivery time, shall be binding on NG as the delivery time indicated is only the time estimated to the best of NG's ability, presuming at the same time that the Buyer has fulfilled all the formalities or terms required or agreed, including, in terms of processing, timely delivery of the necessary material to NG, and that NG has received all the technical and other information required for the execution of the purchase agreement.
- 6.2 NG reserves the right to make delivery in instalments.

7. Shipment

- 7.1 For 'Ex Works (Inco Terms, 2000)' sales, the Buyer shall pay all the shipment costs.

- 7.2 On behalf of the Buyer and thus at the Buyer's risk, NG shall be entitled to arrange the shipment of the purchased product by entering into the necessary transport agreement in such a way which NG may find most appropriate.

8. Delay

- 8.1 In case of delay, the Buyer shall be entitled through a written notice to NG to require delivery and to fix a final, reasonable time-limit, hereby indicating that the Buyer intends to cancel the purchase agreement if delivery is not made within such a time-limit.
- 8.2 Only if delivery has not been made within the reasonable time-limit fixed by the Buyer in accordance with Clause 8.1 and the aforementioned time-limit has been exceeded by more than 30 days shall the Buyer be entitled to cancel the agreement by a written notice sent to NG. The Buyer shall not be entitled to cancel the part of the purchased product which has been delivered to the Buyer in accordance with Clause 2 prior to the Buyer having submitted its notice of cancellation.
- 8.3 In addition to the cancellation right stated in 8.2, the Buyer shall have no other remedies for breach in connection with a delay and may therefore not make any claim for damages whatsoever, including for any operating loss, etc., as a consequence of the delay occurred.

9. Special exclusion of liability provisions

- 9.1 In connection with any purchase containing some kind of individual manufacturing and/or machining of the purchased product in accordance with individual requirements specified by the Buyer, the purchased product shall be delivered in such a way that it meets the specifications in the opinion of NG; however, NG shall not assume any liability in that connection, apart from its responsibility to deliver the purchased product in the usual good quality in terms of materials and workmanship. The Buyer therefore undertakes to test the applicability of the purchased product for the purpose intended by the Buyer before the product is used for such purpose.
- 9.2 NG cannot incur any liability for any defect based on technical documents, specifications or information which NG may receive from the Buyer for the execution of the purchase agreement, unless NG has acted in a grossly negligent manner by not taking this into account.
- 9.3 If the purchased product is to be incorporated by the Buyer in its products and it appears that the purchased product does not work satisfactorily in the Buyer's products, the Buyer shall be responsible for this if the purchased product meets the specification agreed, including any modifications made, which NG is entitled to carry out in accordance with Clause 4
- 9.4 In the event that NG has received material from the Buyer for further machining, NG's liability for damages concerning any damage to the products machined as well as for any loss which the Buyer may suffer due to such damage shall be limited to the twice the price agreed for the machining work.

10. Quantity

- 10.1 Insofar as the purchase agreement stipulates that NG shall deliver a specific quantity of a product to the Buyer, such delivery shall be considered a contractual service if the quantity of the relevant product delivered does not deviate from the quantity agreed by more than $\pm 10\%$.

11. Defects

- 11.1 Immediately after the Buyer has received the purchased product physically and prior to commencement of use, the Buyer must examine the purchased product in accordance with proper business practice,

including checking whether the purchased product complies with the purchase agreement entered into as well as by checking the usability of the purchased product for the Buyer's intended use.

- 11.2 Any complaint about defects shall contain a description of the claimed defect and shall be made in writing and received by NG no later than ten (10) days after the defect was or should have been discovered. If the Buyer fails to do this, the Buyer shall lose its right to exercise any remedies for breach.
- 11.3 Any defect claim shall, however, be made no later than one (1) year after delivery of the purchased product.
- 11.4 If a complaint is made too late and NG, despite of this, enters into discussions of points of facts on the occasion of the complaint made, this will be done from pure accommodating points of view without NG thereby waives its right to subsequently claim that the complaint in question was made too late.
- 11.5 In the event of defects in the delivered product on account of which a claim may be made vis-à-vis NG, NG shall be entitled and obliged at its own option either to replace delivery against the Buyer returning the defective part of the purchased product or to grant the Buyer a proportionate reduction in the purchase price whereby the defect may be considered finally remedied.
- 11.6 When the complaint issue has been settled, NG has a deadline corresponding to NG's normal production time for a supply of the type in question to meet its obligations in accordance with clause 11.5. If NG fails to do so, the Buyer can give NG a final written deadline for remedying the defect. If NG's obligations have not been met prior to the expiry of the aforementioned deadline, the Buyer can have the required remedy carried out at NG's expense, provided that the Buyer does so in a sensible and reasonable way, or cancel the agreement as far as the defective part of the purchased product is concerned.
- 11.7 Apart from the above, NG shall not be liable for defects. Thus, the Buyer cannot exercise any remedies for breach in connection with defects other than in the above-mentioned cases. Irrespective of any negligence, NG shall under no circumstances be liable for any operating loss, loss of profit or any other indirect loss or consequential loss as a consequence of defects in the delivered product.

12. Price

- 12.1 The prices stated by NG and agreed are based on the prices applying at the time of their communication, exclusive of VAT, duties, etc., and with the 'Ex Works (Inco Terms, 2000)' trade term, however, exclusive of packaging.
- 12.2 All prices agreed on the part of NG have been agreed based on the level of material prices and other costs applying at the time of the conclusion of the purchase agreement. In the event that material prices or other costs increase during the period up to the completion of the supply, NG shall be entitled to adjust the prices agreed based on such increases.
- 12.3 In addition to the agreed price, NG shall be entitled to require payment for work to be carried out in case the material, product information, drawings, etc., which the Buyer has given NG, prove to be incomplete or vitiated by errors.
- 12.4 Packaging shall be invoiced separately at cost price.

13. Terms of payment and ownership

- 13.1 In the event that payment is not made on time, default interest will be charged from the invoice data on any overdue amounts, including previously accrued interest, costs, etc., by 2% per month or part thereof until payment has been made.

13.2 Insofar as retention of title is valid under current legislation, NG shall retain the title to the sold products until the price has been paid in full. Insofar as the Buyer is granted credit, the Buyer undertakes upon demand from NG to enter into a consignment-like agreement with NG in order to assure the validity of NG's ownership.

14. Force majeure

- 14.1 NG shall not be liable for not meeting its obligations as a consequence of circumstances beyond NG's control, i.e. any circumstance, the occurrence or existence of which is not caused by an error or negligence on the part of NG (such as, but not limited to, strike, stoppage of work, blockade, lockout, late or defective supplies from sub-contractors or a significant rise in the price of such supplies measured in DK, prevented delivery or non-delivery of raw materials and auxiliaries or supplies of a generally satisfactory quality, fire, acts of God, lack of means of transport, transport accident, machine breakdown, war, currency restrictions, import/export ban, interruption of operations or other stoppages), or which is capable of delaying or preventing the manufacture or delivery of the purchased product or which makes the performance unreasonable onerous for NG.
- 14.2 If faultless or timely delivery is prevented temporarily due to one or more of the force majeure events mentioned in Clause 14.1, the delivery obligation shall be suspended for the period of time which the obstacle lasts with the effect that the delivery thus postponed shall be considered made in time in every aspect in which case the Buyer shall not be entitled to cancel the purchase for as long as force majeure prevails.
- 14.3 If NG intends to assert force majeure, NG shall immediately inform the Buyer thereof, stating the cause of and the expected duration of the obstacle. At the same time, NG shall endeavour to overcome the obstacle as quickly as possible and subsequently meet its contractual obligations as soon as possible.
- 14.4 If a force majeure situation lasts or NG expects it to last for more than six (6) months, NG as well as the Buyer shall be entitled to cancel the purchase agreed and such cancellation shall not be considered breach. In such cases the Buyer can therefore not exercise any remedies for breach vis-à-vis NG.

15. Product liability

- 15.1 NG shall not be liable for any personal injury or damage to property, unless it is substantiated that the injury/damage was caused intentionally or through gross negligence on the part of NG.
- 15.2 NG can under no circumstances be held liable for any financial loss, including operating loss, time loss, loss of profit or any similar indirect loss.
- 15.3 The Buyer undertakes to inform NG in writing without undue delay in case that the Buyer becomes aware of any injury/damage caused by the purchased product, or in case of a risk of such injury/damage may occur. Providing NG with such information shall not relieve the Buyer of taking the steps necessary to prevent or minimise such injury/damage.
- 15.4 Insofar as product liability may be imposed on NG vis-à-vis any third party, the Buyer undertakes to hold NG harmless to the same extent as NG's liability is limited in accordance with this Clause 15.
- 15.5 The Buyer undertakes to have itself sued before the same forum as the one dealing with a product liability case against NG.
- 15.6 If any third party makes a claim against the Buyer based on product liability related to the purchased product, the Buyer shall immediately inform NG thereof.

16. Disputes

- 16.1 Any dispute arising out of these Terms and Conditions of Sale and Delivery shall be settled according to Danish law.
- 16.2 Any dispute arising out of these Terms and Conditions of Sale and Delivery, including product liability issues, shall be settled by arbitration.