

Otto Nußbaum GmbH & Co KG
General Terms of Business
for Supplies of Goods and Services

Version dated 01.01.2003

1. General

- 1.1 The following conditions apply to all, including future, supplies and services, quotations and order acknowledgements of Automotive Testing Technologies GmbH (hereinafter "Supplier").
- 1.2 Additional verbal agreements, any guarantees, additions or amendments to contracts require the Supplier's written confirmation to be legally effective. The requirement of form according to this clause can only be waived in writing.
- 1.3 The Buyer's terms of business only apply if they have been expressly recognised by the Supplier in writing. They do not become part of the contract even through acceptance of the order. The requirement of form according to this clause may only be waived in writing.
- 1.4 All quotations are always without obligation. The Supplier may charge separately for planning and engineering services connected with the preparation of the quotation. Unless specifically agreed otherwise, the Supplier's order acknowledgement governs the scope of the supplies or services (hereinafter "Supplies"). Unless specifically agreed otherwise, the order is performed according to the sales documents (descriptions, printed matter, leaflets and dimension sheets), which the Supplier has attached to his quotation or order acknowledgement or to which he has referred in the quotation or in the order acknowledgement.
- 1.5 The Supplier retains his property rights and copyrights without limitation to cost estimates, drawings, models, plans and other documents and information in physical and non-physical form, in particular electronic form (hereinafter "Documents"). The documents may only be made accessible to third parties with the prior consent of the Supplier. If the order is not awarded to the Supplier, they must be returned immediately on request. Information in non-physical form, particularly electronic form, must be deleted and its deletion must be confirmed in writing.
- 1.6 The Buyer must inform the Supplier if necessary, when placing the order at the latest, of the intended use of the subject of the supply. This applies in particular if the products to be supplied are to be used in connection with toxic, fire-hazardous, caustic or explosive media or any other hazardous substances or under special conditions of use or environmental conditions or if specific operating conditions, dangers or risks of another kind exist.
- 1.7 Works certificates or other documents must be ordered specially when the order is placed. They will be charged separately.

2. Prices and conditions of payment

- 2.1 Unless agreed otherwise, the prices are ex works, excluding freight, packing, insurance and other ancillary costs and include the statutory VAT applicable in each case.
- 2.1 For services outside the Supplier's works, unless agreed otherwise, his relevant transfer and cost rates, margins, allowances, costs, tool, travel and risk costs according to the valid price list apply.
- 2.3 Payments must be made in cash – without any deduction – free to the Supplier's payment point. Credits via cheque are always subject to their receipt. Discountable bills are only accepted subject to special agreement. Costs for their collection and discounting are always debited to the Buyer.
- 2.4 Unless agreed otherwise, payments are due as follows: in the case of works services and services, immediately without any discount. In the case of orders with a goods value of up to €10,000 (without VAT), 30 days from invoice date without any discount, and for orders with a goods value of more than €10,000 (without VAT), 1/3 2 weeks after the order acknowledgement date, 1/3 after three quarters of the confirmed delivery period has elapsed, plus proportional VAT in each case, the remainder (including ancillary costs and remaining VAT) being due 30 days after the date of the final invoice or the ready for shipment notice, without any deduction.
- 2.5 If the Buyer is in arrears with a payment for more than 10 days, even in the case of payment obligations arising from other legitimate transactions, or if he has ceased his payments, or if his assets have deteriorated significantly, all the Supplier's claims against the Buyer from all existing contracts are payable immediately. The Buyer is no longer entitled to claim reductions granted to him. The Supplier may demand prepayment or another form of security at his discretion for products not yet delivered or services not yet performed.
- 2.6 The retention of payments on account of unrecognised complaints or disputes of any kind and/or offsetting with claims that are disputed or not legally established is excluded.

3. Delivery periods and delay

- 3.1 Unless agreed otherwise, the agreed delivery period starts with the arrival of the Supplier's order acknowledgement, but not before receipt of all the documents and information needed for the performance of the order and once the Buyer has performed all other obligations, including the payment of any advance payments. The delivery period is subject to correct and timely procurement as well as the occurrence of unforeseen events, such as force majeure, strike, lock-out and other circumstances beyond the Supplier's control. In such cases, which must be reported to the Buyer, the delivery period will be extended by a reasonable period.
- 3.2 The delivery period is observed if the subject of the supply has left the Supplier's works before it lapses or the readiness for despatch has been announced. If the despatch or acceptance of the item is delayed for reasons for which the Buyer is responsible, he will be debited with the costs incurred through the delay, starting one month after announcement of readiness for despatch or acceptance.
- 3.3 The Buyer can withdraw from the contract without notice if the complete service is finally impossible for the Supplier before the transfer of risks. The Buyer may also withdraw from the contract if, in the case of an order, the

completion of part of the supply becomes impossible and he has a justified interest in the refusal of the part supply. If this is not the case, the Buyer will be liable for the contract price due for the part supply. The same applies in the event of the incapacity of the Supplier. Otherwise, clause 7.2 applies.

- 3.4 If the impossibility or incapacity occurs during the acceptance period or if the Buyer is solely or predominantly responsible for these circumstances, he remains committed to the counter-payment.
- 3.5 If the Supplier is in default and the Buyer suffers damage as a result, he is entitled to demand a lump-sum compensation payment for delay. This amounts to 0.5% in total for each full week's delay, up to a maximum of 5% of the value of that part of the complete supply which cannot be performed on time or according to the contract owing to the delay.
- 3.6 If the Buyer sets the supplier a reasonable period for the service – taking into account the essential cases of exception – following the due date and the period granted is not honoured, the Buyer is entitled to withdraw within the scope of the legal regulations in this respect.
- 3.7 Further claims arising from delayed delivery are determined exclusively according to clause 7.2 of these conditions.

4. Transfer of risks and despatch

- 4.1 The risk is transferred to the Buyer as soon as he has been given the readiness for despatch notice or the readiness for acceptance notice for the item concerned in writing and at the latest when the subject of the supply leaves the Supplier's works. If, at the Buyer's request, the item remains with the Supplier beyond this time, the Supplier is required, at the Buyer's request, to arrange suitable insurance cover. The costs incurred in this respect are debited to the Buyer. If despatch or service are delayed at the Buyer's request by more than 1 month following announcement of readiness for despatch, the Buyer can be charged for storage at the rate of 0.5% of the price of the subject of the supplies, up to a maximum of 5% for each month started. The contractual parties are free to prove higher or lower storage costs.
- 4.2 The goods are despatched at the cost and risk of the Buyer. The Supplier is free to choose the route and form of transport. He must make this choice with the care of a diligent businessman, when he and his agents are only liable for insufficient care in the event of wilful intent or gross negligence.
- 4.3 The Buyer may require the Supplier to arrange transport insurance. The costs incurred are debited to the Buyer.
- 4.4 Transport damage must be reported to the Supplier by attaching the documents providing proof within 10 days of receipt of the supply.
- 4.5 The packaging is charged separately.

5. Reservation of title

- 5.1 All the items supplied remain the property (reservation goods) of the Supplier until all claims are met, for whatever legal reason, including future claims or conditional claims, including those from contracts signed at the same time or later. This also applies if payments are made on specially designated claims.
- 5.2 Machining and processing of the items supplied take place for the Supplier as manufacturer within the meaning of § 950 BGB without obligating him. The processed items supplied are deemed to be reservation goods within the meaning of clause 5.1. If the Buyer processes, connects or mixes the items supplied with other goods, the Supplier acquires co-ownership of the new item(s) in the ratio of the invoice value of the processed items to the invoice value of the other goods used. If the Supplier's ownership lapses through connection or mixing, the Buyer thereby transfers to him the ownership rights accruing to the Buyer to the new stock or item to the extent of the invoice value of the reservation goods and safeguards them for him free of charge. The co-ownership rights arising accordingly are deemed to be reservation goods within the meaning of clause 5.1.
- 5.3 The Buyer may only sell the items supplied in the normal course of business subject to his normal terms of business and provided he is not in default, provided that the claims arising from the re-sale according to the clauses 5.4 to 5.6 are transferred to the Supplier. The Buyer is not entitled to other disposal of the reservation goods.
- 5.4 The Buyer's claims from the re-sale of the reservation goods are hereby assigned to the Supplier. They serve him as security to the same extent as the reservation goods. If the Buyer sells the reservation goods together with other goods not sold by the Supplier, the assignment of the claim from the re-sale only applies according to the re-sale value of the items sold. If items are sold in which the Supplier has co-ownership shares according to clause 5.2, the assignment of the claim applies according to these co-ownership shares.
- 5.5 If the Buyer includes the claim from the re-sale of reservation goods in a current account relationship existing with his customer, the current account claim is assigned to the Supplier in full. After offset, it is replaced by the recognised balance deemed to be assigned up to the amount which the original current account claim constituted.
- 5.6 The Buyer is entitled to collect claims from the re-sale up to revocation of the Supplier, which is permitted at any time. The Buyer is only entitled to assign the claims, including the sale of claims to factoring banks, with the prior written consent of the Supplier. At his request, the Buyer is obliged to notify his customers of the assignment immediately – if the Supplier does not do so himself – and provide the Supplier with the necessary information and documents for collection.
- 5.7 In the case of payment by cheques, title to these is transferred to the Supplier as soon as the Buyer acquires it. If payment is made by bill, the Buyer hereby assigns his rights resulting from it to the Supplier in advance. The handing over of these documents is replaced by the Buyer keeping them for the Supplier or, if he does not acquire direct possession of them, he hereby assigns his obligation to restore possession against third parties to the Supplier in advance. The Buyer will hand over these documents with his endorsement to the Supplier immediately.
- 5.8 The right of the Buyer to possess the reservation goods lapses if he does not perform his obligations arising from this or another contract with the Supplier. In the event of such behaviour of the Buyer contrary to the contract, particularly in the case of defaulted payment, the Supplier is entitled to take back the goods following a reminder and the Buyer is obliged to surrender them.
- 5.9 The Buyer must notify the Supplier immediately of a distraint or impairment by a third party and give him the necessary information and documents to claim his rights. The application to open insolvency proceedings relating to the Buyer's assets entitles the Supplier to withdraw from the contract and demand the immediate return of the item supplied.

- 5.10 If the value of the existing securities exceeds the claims secured as a whole by more than 20 percent, the Supplier is required at the Buyer's request in this respect to release securities at the Supplier's discretion.
- 5.11 The Buyer is obliged to insure the reservation goods against fire, water and theft.
- 5.12 If special conditions or formalities exist in the Buyer's country for transferring the items supplied or the securities, the Buyer must ensure that they are met at his expense.

6. Guarantee and liability

The Supplier guarantees legal defects of the Supply, excluding further claims – subject to clause 7.2 – as follows:

Redhibitory defects

- 6.1 All those parts found to be defective as the result of a circumstance before the transfer of the risk must be improved or replaced free from defects at the Supplier's discretion. The Supplier must be notified of such defects immediately in writing. Replaced parts become the property of the Supplier.
- 6.2 After arrangement with the Supplier, the Buyer must grant the necessary time and opportunity to make all the improvements and supply replacements considered necessary by the Supplier; otherwise, the Supplier is exempt from the liability for the resultant consequences. Only in urgent cases of risk to operating safety or to prevent disproportionately extensive damage, when the Supplier must be informed immediately, is the Buyer entitled to remedy the defect himself or have it remedied by a third party and demand reimbursement of the necessary expenditure from the supplier.
- 6.3 Of the direct costs incurred through the improvement or replacement supply – if the complaint is found to be justified – the Supplier pays the costs of the replacement, including despatch. He also pays the costs of removal and installation as well as the costs of providing the fitters needed and assistants, including travel costs, provided the Supplier does not incur a disproportional burden as a result.
- 6.4 According to legal regulations, the Buyer has a right to withdraw from the contract if the Supplier – taking into account legal exceptions – allows a reasonable period granted to him for the improvement or supply of replacements on account of a redhibitory defect to lapse in vain. If only a minor defect exists, the Buyer only has a right to reduce the contract price. The right to reduce the contract price otherwise remains excluded.
- 6.5 Further claims are determined according to clause 7.2 of these conditions.
- 6.6 No guarantee is accepted in the following cases in particular:
 Unsuitable or incorrect use, defective installation or commissioning by the Buyer or third party, natural wear, defective or negligent treatment, incorrect maintenance, unsuitable equipment, defective construction work, unsuitable site, chemical, electronic or electrical influences – in so far as the Supplier is not responsible for them.
 If the Buyer or a third party does not make the improvement properly, the Supplier is not liable for the consequences. The same applies to changes made to the item supplied without the prior consent of the supplier.

Legal defects

- 6.7 If the use of the item supplied leads to the infringement of industrial protective rights or copyrights in this country, the Supplier will acquire, at his expense, the right for the Buyer to further use in principle or to modify the item supplied in a reasonable manner for the Buyer so that the infringement of the protective right no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period, the Buyer is entitled to withdraw from the contract. Under the conditions mentioned, the Supplier is also entitled to withdraw from the contract. In addition, the Supplier will indemnify the Buyer against undisputed or legitimately established claims of the owner of the protective right concerned.
- 6.8 The obligations of the Supplier mentioned in clause 6.7 are final, subject to clause 7.2 for the case of infringement of protective rights or copyrights. They only exist if
- the Buyer notifies the Supplier immediately of the protective right or copyright infringements claimed;
 - the Buyer assists the Supplier to a reasonable degree with the defence of the claims made and allows the Supplier to take the modification measures according to clause 6.7;
 - the Supplier reserves all defence measures, including extra-judicial arrangements;
 - the legal defect is not based on an instruction from the Buyer and
 - the legal infringement was not caused by the fact that the Buyer changed the items supplied independently or used them in a non-contractual manner.

7. Liability

- 7.1 If the Buyer cannot use the item supplied according to the contract through the fault of the Supplier as the result of failed or defective performance of suggestions made and advice given before or after the conclusion of the contract or through the infringement of other ancillary contractual obligations – in particular instructions for the operation and maintenance of the item supplied – the arrangements of clauses 6 and 7.2 apply accordingly, excluding further agreement of the Buyer.
- 7.2 The Supplier is only liable for damage not suffered by the item supplied – for whatever legal reasons -
- a. in the case of wilful intent;
 - b. in the case of gross negligence of the Supplier's executive bodies or managers,
 - c. in the case of culpable injury to life, body and health,
 - d. in the event of defects deliberately concealed or the absence of which he has guaranteed,
 - e. in the event of defects of the item supplied if he is liable according to the product liability law for personal or property damage to items used privately.

With culpable infringement of essential contractual obligations, the Supplier is also liable in the case of gross negligence of non-management employees and slight negligence of management employees and executive bodies; in the case of the latter, this is limited to typically contractual, reasonably foreseeable damage.

8. Limitation

All claims of the Buyer – for whatever legal reasons – lapse after 12 months. The relevant legal periods apply to compensation claims according to clause 7.2. They also apply to defects in a construction or items supplied which have been used for a construction according to their usual method of use and have caused its defectiveness.

9. Software

- 9.1 If the scope of supply includes software, the Buyer is granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the item supplied intended for it. The software may not be used on more than one system.
- 9.2 The Buyer may only reproduce, revise, translate or convert the software from the direct code to the source code to the extent permitted by law. The Buyer undertakes not to remove manufacturer's information – particularly copyright information – or change it without the express prior consent of the Supplier.
- 9.3 All other rights to the software and the documentation, including the copies, remain with the supplier and the software supplier. Sub-licences may not be granted.

10. Applicable law, place of performance and jurisdiction

- 10.1 The law of the Federal Republic of Germany applicable to the legal relations of national parties with each other applies exclusively to all legal relations between the Supplier and the Buyer.
- 10.2 The place of jurisdiction is Kehl-Bodersweier. The Supplier is also entitled to suit at the registered office of the Buyer or another legal place of jurisdiction. This arrangement also applies to bill and cheque processes. If the Buyer is a businessman, a body corporate according to public law or a special fund according to public law, the above competence also applies in the case of cancellation, withdrawal, redhibition and the like.
- 10.3 The place of performance for carrying out work outside the Supplier's works is the place agreed for the work to be done. The place of performance for other supplies and services and also for payments of the Buyer, including for claims from cheques and bills, is Kehl-Bodersweier.

11. Final provisions

- 11.1 The headings are only used to organise the document and have no material significance, particularly not that of a final arrangement.
- 11.2 If individual clauses of these General terms of sale and supply are or become ineffective, this has no effect on the legal effectiveness of the other clauses. The ineffective clauses must be amended so that their aim can be achieved in an effective manner.