

General Terms and Conditions for contracts for the delivery of goods and/or services between Nussbaum Custom Lifts GmbH and Nussbaum World Lifts GmbH (hereinafter jointly referred to as the "Seller") on the one hand and a contracting partner who, at the conclusion of the contract, acts in exercise of his commercial or self-employed activity (entrepreneur) or is a legal entity under public law or a fund under public law (hereinafter referred to as "Buyer") on the other hand

Revision: 1 October 2021

1. General

- 1.1 All deliveries and services of the Seller shall be governed by the following terms and conditions and any separate contractual agreements.
- 1.2 Offers of the Seller are always subject to confirmation. Unless a special agreement is concluded, a contract comes into force by means of the Seller's written order confirmation.
- 1.3 Opposing general terms and conditions of the Buyer shall apply only if expressly acknowledged by the Seller. They shall not become part of the contract even if the order is accepted.
- 1.4 Test reports and other documentation shall be expressly ordered when placing an order; these will be billed separately.

2. Prices and Payment Terms

- 2.1 Unless agreed otherwise, prices shall apply ex works, exclusive of freight, packaging, insurance and other ancillary costs, and shall be subject to the statutory value-added tax (VAT) applicable at the respective time.
- 2.2 Unless specifically agreed otherwise, services outside the Seller's works shall be subject to the Seller's billing and cost rates, surcharges, allowances, expenses, tool costs, travel costs and risk costs according to the price list valid at the respective time.
- 2.3 Unless specifically agreed otherwise, payments shall be made without any deductions and free of charge to the Seller's point of payment. Credit notes for cheques shall apply subject to the condition that they are received. Discountable bills of exchange will only be accepted if this is specifically agreed. The cost of their collection and discounting shall always be borne by the Buyer.
- 2.4 Payments may not be withheld on the basis of complaints not acknowledged or disagreements of any kind, and/or offsetting against counterclaims that are disputed or that have not been effectively established is not permitted.

3. Delivery Times, Delay

- 3.1 The delivery time shall be governed by the agreements between the Parties. Periods and dates indicated by the Seller for deliveries and services are always subject to confirmation, unless a fixed period or a fixed date has been promised or agreed. For these to be complied with, all commercial and technical issues must have been clarified between the Parties, and the Buyer must have fulfilled his obligations, including but not limited to the payment of an agreed down payment. If this is not the case, the delivery time will be duly extended, unless the Seller is responsible for the delay.
- 3.2 Compliance with the delivery time is conditional upon the correct and timely upstream supply. The delivery time shall only apply under the condition that no unforeseen events occur, such as *force majeure*, strike, lockout or other circumstances for which the Seller is not responsible. In such cases – of which the Buyer shall be notified – the delivery time shall be extended by a reasonable period. The Seller will inform the Buyer as soon as possible of the start and end of such circumstances.
- 3.3 The delivery time will be deemed complied with if, prior to the end of this time, the item to be delivered leaves the Seller's works or notice is given that the item is ready for shipment. If the despatch or the acceptance of the delivered item is delayed for reasons for which the Buyer is responsible, any costs resulting from the delay will be charged to the Buyer starting one month after notice is given that the item is ready for shipment or acceptance.
- 3.4 The Buyer may rescind the contract if the Seller is unable to render the entire performance before the risk transfer. Moreover, the Buyer may rescind the contract if part of the delivery under an order becomes impossible and he has a legitimate interest in refusing partial shipment. If this is not the case, the Buyer shall pay the contractual price for the partial shipment. The same shall apply in the event of inability on the part of the Seller. Apart from this, section 7.2 shall apply.
- 3.5 If the impossibility or inability occurs during the default of acceptance or if the Buyer is solely or largely responsible for these circumstances, the Buyer shall pay consideration.
- 3.6 If the Buyer suffers damage due to a delay on the part of the Seller, the Buyer may demand lump-sum compensation for the delay. This compensation amounts to 0.5 percent for every full week of the delay, up to a total of 5 percent of the value of the part of the overall shipment that cannot be used in due time or in the contractually intended way due to the delay.
- 3.7 If the Buyer, after the due date and under consideration of significant exceptions, grants the Seller a reasonable period for the performance and if this period is not complied with, the Buyer shall be entitled to rescind the contract in accordance with the statutory regulations. The Buyer undertakes to declare within a reasonable period – if requested to do so by the Seller – whether he will make use of his right of rescission.
- 3.8 Further claims due to late delivery shall be governed exclusively by section 7.2 of these General Terms and Conditions.

4. Risk Transfer

- 4.1 The risk will pass to the Buyer when the item to be delivered leaves the works, even if partial shipments are made or if the Seller has also assumed other obligations. If the item to be delivered remains with the Seller beyond this point in time at the request of the Buyer, the Seller shall, at the request of the Buyer, take out appropriate insurance cover; the costs incurred for this shall be borne by the Buyer. If, at the request of the Buyer, the shipment or delivery is delayed by more than one month after the notice that the item is ready for delivery, storage costs in the amount of 0.5 percent of the price of the items to be delivered may be charged to the Buyer for ever new month, up to a maximum of 5 percent. The Parties may furnish evidence of higher or lower storage costs.
- 4.2 The shipment takes place at the expense and at the risk of the Buyer. The shipping method and mode of transport shall be determined by the Seller, who shall select these with the diligence of a prudent merchant. In this context, the Seller and his agents shall only be liable for insufficient diligence by way of intent or gross negligence.
- 4.3 The Buyer may demand that the Seller take out transport insurance; the costs incurred for this shall be borne by the Buyer.
- 4.4 Partial shipments are permissible insofar as the Buyer can reasonably be expected to accept such.

5. Retention of Title

- 5.1 All delivered items will remain property of the Seller until all claims have been fulfilled, regardless what the legal basis may be, including claims that arise in the future or conditional claims, also from contracts concluded at the same time or later on. This shall apply even if payments are made towards specific claims.
- 5.2 The Seller may insure the delivered item against theft, breakage, fire, water and other damage at the expense of the Buyer, provided that the Buyer has not demonstrably taken out the respective insurances.
- 5.3 The Buyer shall not sell, pledge or assign as collateral the delivered item. In the event of seizure, confiscation or other third-party access, the Buyer shall without delay notify the Seller.
- 5.4 In the event of conduct of the Buyer in breach of contract, especially in the event of late payment, the Buyer may, after sending a reminder, take back the delivered item, and the Buyer shall surrender it.
- 5.5 The Seller may only demand the surrender of the delivered item on the basis of the retention of title if he rescinds the contract.

6. Warranty and Liability

Under exclusion of any further claims and subject to the regulations of section 7.2, the Seller shall be liable for defects of quality and title as follows:

Defects of Quality

- 6.1 All parts that turn out to be defective due to circumstances prior to the risk transfer will be rectified or replaced with flawless parts, as the Seller might decide. The detection of such defects shall without delay be reported to the Seller in writing. Replaced parts shall become property of the Seller. At the request of the Seller, replaced parts shall be sent back to the Seller on a "freight paid" basis. In the event of a justified defect notice, the Seller will refund the costs of the most inexpensive shipping method; this does not apply if the costs are higher because the delivered item is located at a location other than the location of the intended use.
- 6.2 The Buyer shall, by coordination with the Seller, allow the time and opportunity required for the performance of all rectifications and replacements the Seller considers to be necessary; otherwise, the Seller will be relieved from the liability for the resulting consequences. The Buyer may only eliminate the defect directly or through third parties and demand reimbursement of the required expenses from the Seller in urgent cases that threaten the operational safety or to avert disproportionately high damage; in this case, the Seller shall be informed immediately.
- 6.3 If the complaint turns out to be justified, the expenses required for the supplementary performance shall be borne by the Seller unless agreed otherwise and insofar as this does not result in an excessive burden for the Seller. If the expenses are higher because the Buyer transported the purchased item to a location other than the place of performance after the delivery, any resulting additional costs shall be borne by the Buyer. In the event of sale of a newly manufactured item, the Seller will also refund the expenses incurred by the Buyer within the scope of recourse claims in the supply chain to the extent of the Seller's statutory obligation.
- 6.4 Within the scope of the statutory regulations, the Buyer may rescind the contract if the Seller, under consideration of the statutory exceptions, allows a reasonable period granted to the Seller for the rectification or replacement due to a defect of quality to pass unsuccessfully. If only a minor defect is on hand, the Buyer shall only have the right to reduction of the purchase price. Otherwise, the right to reduction of the purchase price is excluded.
- 6.5 The warranty will expire if the Buyer modifies the delivered item directly or through third parties without the Seller's approval and this makes the troubleshooting impossible or unacceptably difficult. In particular, no warranty is provided for damage that results from unsuitable or improper use, faulty assembly or commissioning by the Buyer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating utilities, replacement material, deficient construction work, unsuitable building ground, chemical, electrochemical or electrical influences and that was not caused by a fault of the Seller. In any case, any extra troubleshooting costs resulting from the modification shall be borne by the Buyer.
- 6.6 Any delivery of used items that is agreed with the Buyer in an individual case will take place without any warranty for defects of quality.
- 6.7 Any further claims shall be governed by section 7.2 of these General Terms and Conditions

Defects of Title

- 6.8 If the use of the delivered item results in a breach of commercial property rights or copyrights in Germany, the Seller will, as a matter of principle and at his own expense, obtain the right to further use on behalf of the Buyer or modify the delivered item in a way that the Buyer can reasonably be expected to accept so that the breach of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable time period, the Buyer may rescind the contract. Under the said conditions, the Seller too shall have the right to rescind the contract. Moreover, the Seller shall indemnify the Buyer against undisputed and legally established claims of the owners of the respective property rights.
- 6.9 Subject to the regulations in section 7.2 in case of a breach of property rights or copyrights, the obligations of the Seller as specified in section 6.8 shall be conclusive. They shall exist only if
 - the Buyer notifies the Seller without delay of the asserted breach of property rights or copyrights;
 - the Buyer assists the Seller to a reasonable extent in the defence against the asserted claims or enables the Seller to perform the modification measures pursuant to section 6.8;
 - all defence measures including extrajudicial arrangements remain reserved to the Seller;
 - the defect of title is not the result of an instruction of the Buyer; and
 - the breach of rights was not caused by way of unauthorised modification or non-compliant use of the delivered item by the Buyer.

7. Liability

- 7.1 If the delivered item cannot be used by the Buyer in accordance with the contract due to a fault of the Seller as a result of the failure to implement proposals or guidance provided before or after the conclusion of the contract or faulty implementation of such or due to the breach of other ancillary contractually obligations, including but not limited to instructions concerning the use and maintenance of the delivered item, the regulations of sections 6 and 7.2 shall apply, under exclusion of further claims of the Buyer.
- 7.2 For damage that does not arise in the delivered item itself, the Buyer shall, no matter what the legal basis may be, only be liable
 - a. for intent;
 - b. for gross negligence;
 - c. for culpable injury to life, body and health;
 - d. for defects maliciously concealed by the Seller;
 - e. in the context of a guarantee;
 - f. in the event of defects of the delivered item, if liability for personal injury or property damage to privately used items applies under the German Product Liability Act (ProdHaftG).In the event of culpable breach of material contractual obligations, the Seller shall be liable even for slight negligence; however, this liability shall be limited to typical, reasonably foreseeable damage. Any further claims are excluded.

8. Statute of Limitations

All claims of the Buyer, no matter what the legal basis may be, shall expire after 12 months; this also applies to the limitation of recourse claims in the supply chain pursuant to Section 445b (1) of the German Civil Code (BGB), provided that the last contract in this supply chain does not constitute a purchase of consumer goods. The suspension of the statute of limitations pursuant to Section 445b (2) of the German Civil Code (BGB) remains unaffected. Claims for damages pursuant to section 7.2 a) to d) and f) shall be subject to the statutory periods. These shall also apply to defects of a structure or delivered items that have been used for a structure in accordance with the normal mode of use and that have caused its defect.

9. Applicable Law, Jurisdiction

- 10.1 All legal relationships between the Seller and the Buyer shall be governed exclusively by the laws of the Federal Republic of Germany that apply to the legal relationships between domestic parties.
- 10.2 The courts at the location of the Seller's registered office shall have jurisdiction. The Seller may also file a lawsuit at the location of the Buyer's registered office or at another statutory place of jurisdiction.