

General Terms and Conditions of Delivery

ExNC Entwicklungs- & VertriebsgmbH

1. Scope of Application

1.1 These general terms and conditions of ExNC shall apply to legal transactions between undertakings, i.e. to delivery of goods as well as, accordingly, to the rendering of services.

1.2 In principle, ExNC concludes contracts on its own terms and conditions. Deviating terms and conditions (e.g. terms and conditions of purchase) shall only be applicable if ExNC explicitly consents to the same in writing. This shall also apply to future transactions even if no explicit reference is made to them.

2. Offer

2.1 Offers of ExNC shall be subject to change.

2.2 All offering documents and project documents must neither be reproduced nor made accessible to third parties without ExNC's consent. They may be reclaimed at any time and shall be returned to ExNC immediately if the order is placed with someone else.

2.3 ExNC explicitly reserves the right to make price changes and technical changes. ExNC shall not be liable for errors or printing errors.

3. Conclusion of contract

3.1 The contract shall be deemed concluded upon ExNC's written acknowledgement of the order or delivery after receipt of the order.

3.2 The information contained in catalogues, internet, brochures and the like as well as any other written or oral statements shall only be relevant if explicitly referred to in the acknowledgement of the order.

3.3 Subsequent modifications of or amendments to the contract must be confirmed in writing in order to be valid.

4. Prices

4.1 Prices shall apply ex works and/or ex warehouse ExNC, excluding loading and value-added tax. If, in connection with delivery, fees, taxes or other charges are levied, they shall be borne by purchaser. If delivery to a certain place has been agreed upon, the same as well as transport insurance required by customer, if any, shall be charged separately, however, unloading and distribution shall not be included.

4.2 If an order deviates from the overall offer, ExNC reserves the right to change the price accordingly.

4.3 In case of repair orders ExNC shall render the services it deems appropriate and charge them on the basis of the costs incurred and time spent. This shall also apply to services and additional services, the appropriateness of which is discovered in the course of execution of the order only and no special notification to purchaser shall be required.

4.4 Discounts shall not be granted unless they are explicitly agreed in writing.

5. Delivery

5.1 The delivery period shall commence as of the latest of the following dates:

(a) date of acknowledgement of order

(b) date of fulfilment of all technical, commercial and other prerequisites which purchaser is obliged to fulfil;

(c) date on which ExNC receives an advance payment or collateral security that is to be provided before delivery of the goods.

5.2 Official permits and any authorisations by third parties necessary for execution of plants and operation of the same shall be obtained by purchaser.

5.3 ExNC shall be entitled to carry out and charge partial deliveries or advance deliveries. If delivery subject to a call-forward notice has been agreed upon, the goods shall be deemed called off not later than one year after placing of the order.

5.4 If unforeseeable circumstances or circumstances independent of the parties will occur, such as all cases of force majeure, which impede observation of the agreed delivery period, the same shall in any case be extended by the duration of these circumstances, including armed conflicts, official interventions and bans, delay in transport and/or customs clearance, transport damage, shortage of energy and raw material, labour conflicts as well as loss of an important supplier who can only be replaced with difficulty. The circumstances mentioned above shall also entitle ExNC to extend the delivery period if they occur at suppliers.

6. Passing of risk and place of performance

6.1 Benefits and risk shall pass to purchaser upon dispatch of the shipment ex works or ex warehouse, independent of the pricing agreed (as, for example, Incoterms 2000 and the like). This shall also apply if delivery takes place in the course of assembly or if transport is carried out or organised and managed by ExNC.

6.2 In the case of services the place of performance shall be the place where the service is rendered. The risk of a service or an agreed partial service shall pass to purchaser at the time it is rendered.

7. Payment

7.1 If no payment conditions have been agreed, half of the price shall be due upon receipt of the acknowledgement of order and the rest upon delivery.

7.2 In case of partial invoicing the respective partial payments shall be due upon receipt of the respective invoice. This shall also apply to invoice amounts that exceed the original final sum because of subsequent deliveries or other agreements, independent of the payment conditions agreed for the main delivery.

7.3 Payments shall be effected to the paying agent of ExNC in the agreed currency and without any deduction. If cheques or bills are accepted, this shall be on account of payment only. Any and all related interest and charges (such as, for example, collection charges and discount charges) shall be borne by purchaser.

7.4 Purchaser shall not be entitled to withhold or set off payments on grounds of warranty claims or other counterclaims.

7.5 A payment shall be deemed effected at the date at which ExNC is able to dispose of the same.

7.6 If purchaser is in default of an agreed payment or other performance arising out of this transaction or any other transactions, ExNC may, without prejudice to its other rights,

a) postpone fulfilment of its own obligations until such payment or other performance and reasonably extend the delivery period,

b) ask for immediate payment of all outstanding claims under this transaction or any other transactions and charge default interest of 1.5% per month on these amounts as of the respective due date unless ExNC proves costs exceeding these amounts.

In any case ExNC shall be entitled to invoice costs arising prior to proceedings, in particular dunning charges, collection charges and cost of legal counsel.

7.7 Discounts or bonuses granted shall be subject to the condition of full payment in time.

8. Retention of title

8.1 ExNC shall retain title to all goods delivered by it until full payment of the invoice amounts plus interest and costs.

8.2 As security for ExNC's purchase price claim purchaser herewith assigns to ExNC his account receivable under a resale of the goods that are subject to retention of title, even if the same were processed and undertakes to make a respective note in his books or on his invoices. On demand purchaser shall be obliged to notify ExNC of the account receivable assigned including the debtor and to make available any and all information and documents necessary for his collection of the account receivable and to inform the third-party debtor about the assignment. In case of attachment or any other seizure purchaser shall be obliged to refer to ExNC's title and to immediately inform ExNC.

9. Warranty and liability for defects

9.1 If the agreed payment conditions are complied with, ExNC shall, in accordance with the following provisions, be obliged to repair every defect which exists at the time of delivery and impairs the functionality, is based on a construction error, material defect or workmanship defect. No warranty claims may be deduced from information contained in catalogues, brochures, internet, advertising material or oral statements which were not included in the contract.

9.2 The warranty period shall be 24 months unless special warranty periods have been agreed for individual delivery items. This shall also apply to delivery items and service items which are inseparably connected with a building or ground. The warranty period shall commence at the time the risk passes to purchaser according to item 6.

9.3 A warranty claim shall be subject to the condition that purchaser has immediately given notice in writing of the defects which have occurred. Purchaser shall immediately prove existence of the defect, in particular provide ExNC with the respective documents and data available to him. In case of a defect subject to warranty according to item 9.1 purchaser shall have the right to choose between a reasonable price reduction or subsequent improvement. Alternatively, ExNC shall be free to correct the defect through replacement.

9.4 If ExNC produces goods on the basis of construction data, drawings, models or other specifications of purchaser, ExNC's liability shall be limited to execution according to the conditions.

9.5 Defects arising out of an arrangement or assembly that was not carried out by ExNC, out of insufficient setting, non-compliance with installation requirements and conditions of use, overstressing of the parts beyond the performance stated by ExNC, negligent or incorrect handling or use of

inappropriate factory supplies shall be excluded from warranty; this shall also apply to defects which may be attributed to material provided by purchaser. ExNC shall not be liable either for damage which may be attributed to acts of third parties, atmospheric discharges, overvoltage or

chemical influences. Warranty shall not cover replacement of parts which are subject to wear and tear. ExNC shall not assume any warranty in case used goods are sold.

- 9.6 Warranty shall forfeit immediately if purchaser himself or any third party who was not explicitly authorised by ExNC changes or repairs the items delivered without ExNC's written consent.
- 9.7 The provisions of 9.1 to 9.6 shall apply accordingly also to any liability for defects for other motives.
- 9.8 ExNC warrants to the Purchaser, that each reconditioned, refurbished and/or repaired part shall be free of defects as mentioned above until the end of the original warranty period according 9.2.

10. Rescission of contract

- 10.1 Purchaser shall be entitled to rescind the contract in the event that a delay in delivery may be attributed to ExNC's gross negligence and if a reasonable grace period which was granted has expired. Rescission of contract shall be made by registered letter.
- 10.2 Independent of its other rights ExNC shall be entitled to rescind the contract
- (a) if delivery or commencement or continuing of the service is delayed for reasons for which purchaser is responsible or is further delayed although a grace period was granted,
- (b) if doubts with respect to purchaser's solvency arise and if purchaser upon ExNC's request neither effects an advance payment nor provides adequate collateral security prior to delivery, or
- (c) if due to the circumstances listed under item 5.4. the delivery period is extended by more than half of the originally agreed delivery period and at least amounts to 6 months.
- 10.3 Rescission of contract may also be declared with respect to any outstanding part of the delivery or service for the above reasons.
- 10.4 In case insolvency proceedings are opened over the assets of either contracting party or a petition for opening of insolvency proceedings is dismissed for lack of assets to cover the cost, the other contracting party shall be entitled to rescind the contract without having to grant a grace period.
- 10.5 Notwithstanding ExNC's claims for damages, including costs arising prior to proceedings, in the case of a rescission of contract services or partial services which have already been rendered shall be accounted for and paid according to contract. This shall also apply if a delivery or service has not been accepted by purchaser yet as well as to preparatory actions of ExNC. Instead, ExNC shall also be entitled to demand that goods already delivered be returned.
- 10.6 Any other consequences of rescission shall be excluded.

11. Liability

- 11.1 Unless any mandatory statutory regulations provide for a more strict liability, ExNC shall only be liable for damages within the scope of the statutory provisions if it is proven that NautiCast acted with wilful intent or gross negligence. Liability for slight negligence, compensation for consequential damage and loss of property, not earned savings, loss of interest and for damage arising from third-party claims vis-à-vis purchaser shall be excluded.
- 11.2 ExNC shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.
- 11.3 Purchaser shall be solely responsible for proper and professional use of ExNC products as well as for processing and installation of the same.
- 11.4 Purchaser warrants that he holds all permits and authorisations necessary for purchasing and distribution and/or installation and/or operation.

12. Assertion of claims

Unless statutory provisions or provisions separately agreed in an individual case provide for shorter periods, all claims of purchaser shall have to be asserted within three years of passing of risk; otherwise they shall be forfeited.

13. Software

- 13.1 The use of software supplied and not produced by ExNC is subject to the conditions of the software producer.
- 13.2 Software delivered by ExNC for operation or use of their products shall exclusively be used for this purpose. Any reproduction, even for one's own purposes, shall be prohibited. Passing on of software to third parties in whatsoever way or for whatsoever purpose without ExNC's prior consent is prohibited.

14. Industrial property rights and copyright

- 14.1 If ExNC produces goods, software or other services on the basis of construction data, drawings, models or other specifications of purchaser,

purchaser shall indemnify and hold ExNC harmless in case of an infringement of property rights, if any.

- 14.2 Execution documents, such as, for example, plans, plots and other technical documentation as well as samples, catalogues, brochures, illustrations, software and the like shall always remain ExNC's intellectual property and shall be subject to the respective statutory provisions with respect to reproduction, imitation, competition, etc. Item 2.2 shall also apply to execution documents.

15. General

15.1 Severability clause

If individual provisions of the contract or of these provisions are ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by a valid one which comes as close as possible to the intended purpose.

15.2 Miscellaneous

The fact that ExNC does not exercise a right to which it is entitled shall constitute no waiver of the said right.

16. Place of jurisdiction and law

For settlement of all disputes arising out of the contract - including those regarding existence or non-existence of the same - the court having jurisdiction over the subject-matter at the head office of ExNC, in [Klagenfurt the Landesgericht], shall have exclusive jurisdiction. The contract shall be subject to Austrian law excluding the rules of conflict. Application of the UNCITRAL Convention of the United Nations on Contracts on the International Sale of Goods shall be excluded by mutual consent.

ExNC Entwicklungs & VertriebsgmbH
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