

GENERAL TERMS AND CONDITIONS OF NOVEXX SOLUTIONS GMBH ('Novexx Solutions')

§ 1 Validity

1. All supplies made and services rendered by Novexx Solutions shall solely be carried out on the basis of the following General Terms and Conditions ('Terms').
2. The application of general terms and conditions of contractual partners ('Customers') shall be excluded. Provisions inconsistent with these Conditions, made orally, in writing, in person or by e-mail, in particular those in the general terms and conditions of the Customer, shall solely apply if confirmed in writing by Know-How. This shall also be the case if Novexx Solutions, while being aware of the conflicting or deviating provisions of the Customer unconditionally performs its delivery to the Customer without explicitly re-confirming that the Customer's conflicting or deviating provisions are excluded.

§ 2 Contracts entered into and order confirmation

1. Quotations made by Novexx Solutions are non-binding. Novexx Solutions shall only be bound by its quotations if they are expressly stated to be binding. Otherwise they should be viewed as an invitation to submit a tender. In such cases, written confirmation by Novexx Solutions of an order is required to conclude a contract between parties.
2. Written order confirmation by Novexx Solutions is decisive in respect of the scope of the delivery. Order confirmations by Novexx Solutions shall be made subject to availability on the part of a third party, insofar as Novexx Solutions shall supply goods made by third parties.
3. Information, prospectuses and advertising of whatever nature, in particular descriptions, illustrations, drawings, samples, data relating to quality, properties, composition, performance, use and suitability, weights and measures of the contract goods as well as oral collateral agreements and assurances, even on the part of an employee or representative of Novexx Solutions, shall be non-binding and shall only become valid and binding if confirmed in writing by Novexx Solutions.
4. Slight deviations from the product data shall be permitted, as long as they are not unreasonable for the Customer.

§ 3 Delivery and transfer of risk

1. The stated delivery times are indicative and non-binding unless expressly stated otherwise in Novexx Solutions's order confirmation. Novexx Solutions shall be entitled to make delivery prior to an indicated delivery time.
2. Should a binding delivery time not be adhered to, the Customer shall only be entitled to withdraw from the contract if a reasonable delivery time subsequently set by the Customer has not been adhered to. Reasonable shall usually be considered to mean at least four weeks for delivery by air freight, at least seven weeks for sea freight otherwise at least two weeks, each from the expiry of the binding delivery time. The above shall only apply to standard goods and parts.
3. In the event of any delay in delivery attributable to slight negligence, the maximum claim for damages following § 286 BGB shall be limited to 5% of the total price of the products for which Novexx Solutions is in default.
4. Novexx Solutions shall be entitled to make partial deliveries, insofar as this is economically viable for the Customer. Also for partial deliveries the price of the supplied products shall be payable upon delivery and receipt of the invoice.
5. Transfer of risk to the Customer shall be effected at the latest on delivery to the freight forwarder or other transporter. This shall also apply in the exceptional event that Novexx Solutions assumes the transport costs in accordance with a separate agreement. Should the Customer not specify otherwise, the choice of a freight forwarder shall rest with Novexx Solutions.

§ 4 Prices and conditions of payment

1. The agreed prices shall be net excluding value added tax at Eching (Germany) (Incoterm: FCA). In addition, costs for clichés, tools, fitting, installation, instruction, manufacturing or other collateral services performed at the time of the work shall be charged to the Customer.
2. Novexx Solutions shall be entitled at all times to request payment in advance from the Customer.
3. Unless agreed otherwise, Novexx Solutions's invoices shall become due for payment without exceptions within 30 (thirty) days without any discount. In the event of repair or servicing, Novexx Solutions's invoices shall become due for payment within 8 days without discount.
4. The Customer shall be in default if it does not pay following receipt of a reminder issued by Novexx Solutions on expiry of the due date for payment. Without prejudice to the foregoing, the Customer shall be in default if it fails to comply with a specific time agreed for payment. This shall not affect the statutory provisions according to which the Customer shall automatically be in default after 30 (thirty) days of issue of the invoice.
5. In the event of default on the part of the Customer Novexx Solutions shall be entitled, without prejudice to its further rights, to charge interest at 5% p.a. in addition to the base interest rate in accordance with § 1 of the 'Diskontsatz-Überleitungs-Gesetzes (DÜG)' of June 9, 1998. However, the Customer has the right to prove that Novexx Solutions has not sustained any damages at all or that the damages sustained by Novexx Solutions were significantly less than the interest set forth above.
6. If the customer is in default in respect of payment arising from a contract, Novexx Solutions shall be entitled to withhold further delivery of goods to the Customer until payment is received in full. In this event, Novexx Solutions shall also be entitled to terminate the entire contract by means of written notice ('Rücktritt') to the Customer. On termination of the contract, all obligations of the Customer to Novexx Solutions shall become immediately due and payable. Novexx Solutions shall be released from its obligation to provide the Customer with goods.
7. Insofar as payment by instalments has been permitted, the remaining amount will be due for immediate payment if the Customer remains in default with payment of an instalment for longer than one month or fails to pay an instalment in full or on time for the third time, insofar as the Customer has been declared being in default.
8. Compensation or exercising the right to withhold repayment based on any counterclaim by the Customer, which is disputed by Novexx Solutions and which has not been legally and validly established, shall be excluded. In addition, the Customer shall only have the right to withhold payment if the counterclaim is based on the same contractual relationship.

§ 5 Warranty

1. Novexx Solutions warrants that the goods supplied shall be free from manufacturing defects by normal use and operation in accordance with the contract. The warranty is limited for 12 months after the initial delivery date. Should a objective defect in material arise, Novexx Solutions shall have the choice to either repair or replace the defective goods.
2. We reserve the right to unavoidable deviations in weight, dimensions, structure, adhesive strength, colour or other properties. A deviation of a quota of 5% in dimension is accepted as usual in the trade and shall not represent just cause for complaint. In the case of printed or ready-made articles, we shall make every effort to comply as closely as possible with the required shades of colour. Due to the differing properties of the materials, variations in colour and fit are, for technical reasons, inevitable and may not be grounds for complaint unless substantial differences occur. With regard to the design of machines as well as spares and accessories, this will also apply in the case of identical supplementary orders. We reserve the right to introduce technical progress and innovations. A shortfall or surplus in quantity up to 10% is accepted as usual in the trade and shall not represent just cause for complaint.
3. Apparent defects should be notified in writing by the Customer to Novexx Solutions immediately, and in any event within one week of delivery. Other defects, which cannot be ascertained during this time even on careful inspection, should be reported immediately on discovery to Novexx Solutions.
4. Following the ultimate failure or when it is impossible to repair or replace goods within a reasonable time, the Customer shall be entitled to demand a price reduction or to cancel the contract (rescission). Further claims by the Customer based on the absence of guaranteed properties shall not be affected.
5. The Customer itself should independently test the suitability of the product. In the event the Customer is a company, § 377 HGB shall apply. The warranty does not cover repair of defects caused by external influences or faults in operation. The warranty does not cover goods and parts subject to natural wear and tear. Warranty claims cannot be made if the Customer fails to observe directions for use and maintenance or if the Customer or unauthorized third parties make changes to the products or use materials which do not match the specifications for the goods in question. In addition, the warranty does not apply to damages caused by the use of the goods with equipment or software, which are incompatible with the goods, unless Novexx Solutions has explicitly confirmed the compatibility thereof in writing.
6. Further claims made by the Customer under the terms of the warranty shall be excluded.

§ 6 Restrictions on liability (exclusions and limitations thereof)

1. Except in the event of breach of an essential contract duty or a failure to perform a cardinal duty required for complying with the essence of the contract, Novexx Solutions shall not be liable for damages caused by slight negligence.
2. In the event of breach of an essential contract duty due to slight negligence or in the event of gross negligence by ordinary employees (thus not management or corporate bodies), Novexx Solutions's liability shall be limited to contract typical damages, the like of which can be foreseen at the time the contract was concluded.
3. Novexx Solutions shall not be liable for indirect damages, consequential damages, or lost profits, in the event of wilful or gross negligence of an employee or agent, who is not a corporate body or a manager of Novexx Solutions, or if the failure to perform an essential contract duty was not caused by gross negligence or wilful misconduct.
4. Warranty claims by the Customer cannot be made two years (if the Customer is a company: one year) after the moment that the Customer obtained knowledge of the damage or, regardless of such knowledge, three years after the damages occurred. This shall not apply to claims based on criminal or fraudulent behaviour, or in the event of death, personal injury or damage to the health of persons.
5. Except in the event of liability on the basis of statutory product liability, for immediate defects or the absence of guaranteed properties, the foregoing restrictions on liability shall apply to all claims for compensation for damage, irrespective of the legal basis.
6. The foregoing restrictions on liability shall also apply to any claims for compensation for damages by the Customer against employees or agents of Know-How.

§ 7 Reservation of title

1. Novexx Solutions shall retain title to the goods until payment has been received in full as well as all other payments that are due and payable by the Customer or its group companies at the time that the contract was concluded.
2. Novexx Solutions grants the Customer and its group companies the right to dispose of the goods in the ordinary course of business. It shall, however, assign all receivables in this respect to Novexx Solutions amounting to the total of the invoiced price (including value added tax), if the goods are re-sold to a customer or a third party, irrespective of whether the goods supplied have been finished or processed by the Customer. The Customer shall remain entitled to collect said receivables even after assignment of same. This does not affect Novexx Solutions's right to collect said receivables itself. However, Novexx Solutions undertakes that it shall not collect the receivable, as long as the Customer continues to fulfil its payment obligations in respect of the agreed payment schedule, the Customer's financial situation does not materially deteriorate, the Customer is not in default and in particular no suspension of payment or insolvency proceedings have been requested. If that is the case, however, or if there are other pressing reasons, Novexx Solutions may require that the Customer discloses to Novexx Solutions the receivables and the names of the debtors, and all data necessary for collection, that the Customer transfers the relevant documents and informs the debtors (third parties) of the assignment. This prior assignment shall cover the receivable as well as collateral and any alternative claims. Other disposals relating to the goods shall not be permitted and shall be grounds for payment of compensation for damage.
3. If the Customer is in default with payment, Novexx Solutions shall be entitled, after having granted an extension of two weeks, to reclaim the goods that are subject to retention of title. Such action shall not mean dissolution of the contract and Novexx Solutions's rights shall remain unaffected. The contract shall not have been dissolved.
4. The Customer shall be bound, in the event of pledges being vested, to inform the third party of Novexx Solutions's rights, and to notify and inform Novexx Solutions of the same immediately. Insofar as the third party is not in a position to grant Novexx Solutions the judicial and extra-judicial costs of a claim in accordance with § 771 ZPO, the Customer shall be liable for expenses incurred by Novexx Solutions.
5. The Customer shall be bound to take proper care of the supplied goods and to insure the same appropriately against fire damage, water damage and theft against the value of the goods as new. Insofar as maintenance and inspection costs are necessary, the Customer shall pay for the same for its own account in a timely fashion.

§ 8 Force majeure

1. Delays in delivery and service due to force majeure and due to unforeseeable, unavoidable and material events, for which Novexx Solutions cannot be held responsible, which make provision of services either impossible or subject to delay – e.g. subsequent material shortages, industrial disputes, strikes, lockouts, shortage of staff, shortage of raw materials/power, scarcity of means of transport, official directives and instructions etc. – shall entitle Novexx Solutions, even in the event of a binding, agreed timeframe or delivery date, to suspend delivery/service as long as the force majeure circumstances continue. This shall also apply if the delay arises at Novexx Solutions's suppliers or their subcontractors. Novexx Solutions shall be bound to carefully select its suppliers.
2. In the event of delay in delivery or service due to force majeure, Novexx Solutions shall inform the Customer of the beginning and the end of the situations leading to force majeure. If the impediment shall last longer than three months, the Customer shall be entitled, after granting a reasonable extension of the delivery time, to cancel that part of the contract, which has not, to date, been fulfilled. In the event of an impediment which lasts longer than three months, Novexx Solutions shall also be permitted to cancel the contract, if this appears to be reasonable taking the interests of the Customer into account. To the extent a partial delivery is not in the interest of the Customer, taking into consideration the interests of Novexx Solutions, the Customer may withdraw from the contract in full.

§ 9 Indemnity third party rights

- Novexx Solutions cannot examine and guarantee comprehensively that by the article ordered by the customer a violation of trademark protection rights, commercial patent rights and/or copyrights of third parties may occur. The examination of any violation of third parties rights is alone and sole in the responsibility of the customer, who release Novexx Solutions with placing the order explicitly from any liability herefor. Any claim of any kind and from this resulting costs out of a violation of the rights of third parties can not be claimed against Novexx Solutions, but alone against the customer. As far as a violation of rights of third parties is recognizable for Novexx Solutions, Novexx Solutions will inform the customer immediately.

§ 10 Deterioration of the Customer's financial position, dissolution of the contract

1. If the Customer, after conclusion of the contract, becomes unable to pay, is the subject of insolvency proceedings regarding its assets or if circumstances should arise after conclusion of the contract that materially influence the creditworthiness of the Customer, Novexx Solutions may suspend delivery until compensation has been provided or the Customer has provided security. The same shall apply, insofar as Novexx Solutions becomes aware, through no fault of its own, of the deterioration of the Customer's financial position only after the contract has been concluded, even if such circumstances existed before the contract was entered into.
2. Should the Customer not perform within a reasonable time and if it cannot, within a reasonable time, provide security for its performance, Novexx Solutions shall be entitled to dissolve the contract or to claim compensation for damages for breach of contract. The Customer has the right to prove that Novexx Solutions has not sustained any damage at all or that the damages sustained by Novexx Solutions were significantly less than the interest rate referred to above.

§ 11 Final clauses

1. The place of performance for deliveries and services and the payment is Eching (Germany).
2. The Customer may only transfer rights vis-à-vis Novexx Solutions to third parties with prior written consent.
3. Contracts concluded between Novexx Solutions and the Customer shall be subject to German law under the exclusion of international private law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
4. The registered office of Novexx Solutions shall be the sole area of jurisdiction for all disputes arising directly or indirectly from contractual obligations, including complaints relating to bank drafts and cheques. This shall not apply to legal collection proceedings. Novexx Solutions reserves the right to institute proceedings within the Customer's court of jurisdiction.
5. Should individual provisions of the contract and/or the Terms become wholly or partially invalid, or should there be an omission in the contract, the other provisions or parts of the contract shall remain in effect. The wholly or partially invalid provision shall be replaced by a provision, which comes closest to the commercial content of the invalid provision/invalid part.