

Terms of Delivery and Payment for Novamelt GmbH (Version: 06/2007)

Unless other terms or conditions have been agreed upon in writing, solely the following terms are valid for all present and future deliveries and services (subsequently referred to as "deliveries"). Our customers' terms and conditions of business are valid only to the extent that we agree to them in writing.

1. Offers / Contracts

- 1.1 Our offers are not binding. Contracts come into being only through our written confirmation of the order or by delivery.
- 1.2 Oral agreements or agreements made on the telephone must be confirmed in writing. In particular, our employees are required to provide written confirmation of any oral additional agreements or commitments going beyond the contents of the written contract or changing these Terms of Delivery and Payment to our disadvantage.
- 1.3 The requirement that confirmation must be in writing is also met when the confirmation is sent by fax, data transmission, or e-mail.

2. Assumption of Risk and Delivery

- 2.1 Unless a special agreement has been reached, the customer assumes risk as soon as we have turned the goods over to the carrier or placed the goods at the customer's disposal, or, in those cases in which shipment has been delayed for reasons beyond our control, as soon as we have notified the customer that the goods are ready to ship. This condition applies even in cases of partial delivery or when we also provide other services, e.g., assume shipping costs. Should the customer so request, we will insure the shipment against transportation damages at the customer's expense.
- 2.2 The delivery period begins when the contract confirmation is sent, however, not before all details concerning the execution of the contract and all technical questions have been settled, as well as not before any agreed-upon partial payment has been received. The delivery deadline has been met when the goods have left our plant before the deadline expires or, when shipment has been delayed for reasons beyond our control, when the customer has been notified that the goods are ready to ship.
- 2.3 Partial deliveries are allowed to a reasonable extent. 2.4 Should shipment be delayed for reasons for which the customer is responsible, we reserve the following rights:
 - to store the goods at the customer's expense, either on our premises or those of a third party. Should the goods be stored on our premises, we will charge at least 0.5% of the invoiced value of the stored shipment per month.
 - after an appropriate grace period has been given and has expired without remedy, to withdraw from the contract and to demand damages instead of performance.
 - to bill the customer for further expenses arising from his failure to timely fulfill requirements or to complete necessary formalities in his area of responsibility, e.g., to obtain import licenses. In addition, the customer assumes the risks arising from his failure to perform these duties.
- 2.5 Should delivery be delayed, our liability is limited in cases of ordinary negligence to 0.5% of the net invoice value of the delayed goods for every full week of delay and a maximum of 5% of this value. Claims for damages instead of performance according to Section 11 are not affected by this limit. The customer must inform us about contractual penalty liabilities to his customers no later than the time at which the contract is concluded.

3. Confidentiality

The parties to this contract obligate themselves to treat all non-public commercial and technical details that become known in the course of the business relationship as trade secrets and to keep them in strict confidentiality.

4. Force majeure

Force majeure; stoppages; strikes and labor conflicts; difficulties in obtaining material or energy; transportation delays; shortages of labor, energy, or raw materials; actions by administrative bodies; as well as difficulties in obtaining authorizations, in particular import and export licenses, and other events that are neither foreseeable, avoidable, nor subject to our control extend the delivery period for the length of the disturbance and its effects. This extension of the delivery period also applies when the difficulties occur to our suppliers or during an existing delay. Should the hindrance not only be temporary, both parties have the right to withdraw from the contract. Claims for damages are excluded in these cases.

5. Packaging

Unless the customer waives the requirement, we will take transport packaging back at our place of business. The time at which the packaging is returned must be coordinated with us. The customer assumes the transportation expenses. The packaging must be returned clean, free of foreign substances, and sorted.

6. Prices / Payment

- 6.1 Unless another agreement has been reached, our prices are free at domicile and include packaging, but do not include the applicable value added tax.
- 6.2 Unless another agreement has been reached, all payments must be made to our dedicated account without deductions within 30 days of the date of the bill. Payments are valid only to the extent that we can freely dispose them at a bank. We accept checks only on account. The customer bears charges and bank and transfer fees. These expenses are due at once.
- 6.3 Should payment be delayed, we will charge interest on the overdue amount of 8 percentage points above the base interest rate applicable at the time or of 10%, whichever is greater.
- 6.4 Should reasonable doubt arise as to the customer's ability to pay, e.g., due to a history of delayed payments, current delay in payment, bill or check protest, we have the right to require collateral or cash payment for contemporaneous performance. Should the customer not fulfill this request within an appropriate period of grace, we may withdraw from the uncompleted part of the contract. The period of grace is not required, when it is apparent that the customer is not able to provide collateral, e.g., when a decree of insolvency for the customer's assets has been applied for.

7. Offsetting Claims / Withholding Payment

The customer may withhold payment or offset claims only to the extent that the counterclaim is undisputed or legally binding.

8. Retention of Title

- 8.1 We reserve title to the delivered goods until all payments and all checks and bills of exchange resulting from the business relationship with the customer have been made or irrevocably credited to our account. Should an open account relationship with the customer exist, retention of title applies to the acknowledged balance.
- 8.2 The customer must notify us without delay of third-party actions against the conditional goods. To the extent that the customer cannot recover expenses resulting from the defense against such an action from the third party, he must bear the expenses himself.
- 8.3 Processing of the conditional goods by the customer are always carried out on our behalf without creating any liability on our part. Should the conditional goods be mixed with or incorporated into other goods, we acquire title to the new goods in the proportion of the invoiced value of the conditional goods to the invoiced value of the other materials.
- 8.4 The customer has the right to sell the conditional goods in the course of normal business transactions.
- 8.5 The customer assigns us in full and in advance all claims he accrues against a customer or a third party from resale or further use of the conditional goods. We accept the assignment of claims.
- 8.6 The customer collects the assigned claims on our behalf. The authorization to collect expires when the customer no longer meets his payment obligations to us or his financial circumstances have significantly worsened, in particular when a decree of insolvency has been applied for. In these cases, the customer also may no longer resell or make further use of the conditional goods. The customer must then inform his debtors about the assignment of claims, give us all information necessary for the collection of the claims, and surrender the relevant documents to us. Repossession of the conditional goods does not constitute withdrawal from the contract. Should we withdraw from the contract, we may sell the goods on the open market.
- 8.7 Should the value of collateral exceed our claims by more than 10%, and should the customer so request, we will release collateral of our choice to this extent.

9. Obligation to Inspect / Changes

- 9.1 The specifications in our data sheets are based upon our current technical knowledge and experience based upon use of the product. Because of the variety of possible influences during processing and use of our products, these specifications do not free the customer from the obligation to test the products for suitability for the intended use. We assume no liability for damages that could have been prevented by a test for use or for the effects of the product together with other materials.
- 9.2 To the extent that these changes are customary and reasonable, we have the right to make technical changes in the course of product development.

10. Liability for Defects

- 10.1 We warrant that the goods we deliver are not defective, correspond to the specifications agreed upon, and exhibit the characteristics agreed upon.
- 10.2 Obvious defects in the delivered goods must be reported to us in writing without delay, in any case within 8 days after receipt of the goods; hidden defects, within 3 days of discovery. Should these deadlines be exceeded, all claims based upon material defects expire.
- 10.3 Unless we have violated our obligations intentionally or with gross negligence, or have been maliciously silent with regard to the defect, the period of limitations is 12 months after delivery.
- 10.4 We reserve the right to slight (up to +/- 5%) variations of amount.
- 10.5 Customary variations in chemical composition or physical manufacturing are not a defect.
- 10.6 The specifications in the data sheets and analysis certificates are purely information about composition and are not warranted characteristics.
- 10.7 In case of justified complaints, we have the choice between delivering replacements or repairing the goods. Should the replacement delivery or the supplementary performance also be defective, refused without justification, or delayed, the customer may, after a reasonable additional extension period has expired without remedy, demand a reduction in price, or, should the defect not be insignificant, withdraw from the contract and demand damages instead of performance according to Subsection 11.1.
- 10.8 We assume no supplementary performance expenses arising because the purchased item has been moved to a location other than the customer's place of business after delivery.

11. Liability

- 11.1 Claims for damages of any sort against us are excluded when we, our lawful representatives, or our vicarious agents have caused the damage by ordinary negligence. This exclusion of liability does not apply should there be bodily injury, should a contractual guarantee have been assumed, or should important contractual obligations have been violated in a way that endangers the fulfillment of the contract. In such cases, however, our liability is limited to the extent of the guarantee, or, by negligent violation of important contractual obligations, to customary and foreseeable damages. Claims arising from product liability law are not affected by this section.
- 11.2 With the exceptions of claims arising from liability for defects, claims arising from product liability law, or claims due to damage to life, body, or health, claims for damages expire one year after the customer learns about the damage and that it is compensable, or, should, without gross negligence, have learned about the damage and that it is compensable.

12. Place of Fulfillment, Place of Jurisdiction, Choice of Law

- 12.1 Place of fulfillment for all services arising from this contract is our place of business.
- 12.2 The place of jurisdiction for all disputes arising from the delivery contract is the place of jurisdiction for our place of business. However, we also have the right to sue at the customer's place of business.
- 12.3 German law applies. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11 April 1980 does not apply.