

**General Terms and Conditions  
for the Supply of Goods and Services by Novoflow GmbH**

**§ 1**

**Application of the General Terms and Conditions of Business**

1.1 These General Terms and Conditions of Business (hereinafter the "Terms and Conditions") shall apply to the exclusion of all others for all goods and services supplied by us as well as the offers made by us. Terms and conditions of business of the contracting party, which conflict with or deviate from these Terms and Conditions, shall only apply if a member of our management board or one of our holders of commercial powers of attorney or a person authorized by us for this purpose expressly accepts them. The general terms and conditions of business of the contracting party shall not be binding, even if their application has not been expressly rejected by us. Any tacit acceptance of the general terms and conditions of business of the contracting party through acceptance inferred from our conduct shall be excluded hereby. Part B of the Rules for the Award of Public Works Contracts shall also be considered as part of the general terms and conditions of business of the contracting party.

1.2 These Terms and Conditions shall also apply to future contractual relationships. They shall apply irrespective of whether reference has been made to them in any specific case.

1.3 Amendments and additions which deviate from these Terms and Conditions must be made in writing. This shall not apply to amendments agreed upon with members of our management board or one of our holders of commercial power of attorney or other persons authorized by us to agree on amendments or additions.

**§ 2**

**Offer to Contract and Conclusion of Contract; Copyright to our Documents; Restrictions on the Use of Documents**

2.1 Our offers shall be subject to change without notice and are not binding. A contract shall not be concluded until we have confirmed our acceptance of the contracting party's order. A contract between us and the contracting party shall also be concluded without any confirmation on our part if we supply the goods and services ordered and the contracting party accepts them.

2.2 We shall have two weeks after receipt to accept an order or contract.

2.3 Unless agreed otherwise, we shall retain the title and copyright to any offers or cost estimates we make as well as the title and copyright to drawings, diagrams, descriptions and other documents and materials made available to the contracting party regardless of whether they were prepared by us or third parties. The contracting party may not make the aforementioned items themselves or the contents thereof available to third parties without our express approval. Any use of the aforementioned items and documents and any reproduction shall only be permitted insofar as this is necessary for the conclusion or performance of contracts. The aforementioned documents and materials as well as reproductions must be returned to us without delay, at the expense of the contracting party, if

no contract is concluded or if they are no longer required for the further performance of the contract.

2.4 The contracting party must follow our instructions on the use of the items and documents mentioned in clause 2.3. In particular, the contracting party must comply with the restrictions on use stipulated in the documents and may not use the items and documents for purposes for which they were not intended.

### **§ 3**

#### **Prices and Terms of Payment; Rights of Set Off and Retention**

3.1 Unless agreed otherwise, our prices shall be "ex works". The packing shall not be included in the price, but shall be invoiced separately.

3.2 The applicable value added tax is not included in our prices. The value added tax will be charged and shown separately in the amount prescribed by law on the invoice date if our delivery is subject to value added tax. In the case of exports, the contracting party must pay the fees and charges incurred for supply to the recipient country, in particular the customs duties and any additional legal fees and charges incurred in the recipient country itself. If we must initially pay the fees and/or charges related to exports ourselves, the contracting party must reimburse us for them.

3.3 Our invoices shall be immediately due and they must be paid within 30 days from the customer's receipt of them. Upon the expiration of the payment period, the contracting party shall be in default without need of a payment reminder from us. In the event of a default in payment, we shall be entitled to request the default interest stipulated by law. Our rights to claim for further damage shall not be prejudiced hereby.

3.4 Unless agreed otherwise, a 2% cash discount shall be allowed, if payment is made within 10 days from the invoice date. In the event of a cashless payment, the timely transfer of the payment by the contracting party shall be decisive for its compliance with the time limit.

3.5 The contracting party shall only be entitled to set off its counter-claims against our claims where its counter-claims have been established as valid by a nonappealable judgment or are uncontested. This shall also apply to the assertion of any retention right.

3.6 We shall only accept discountable bills of exchange if this has been expressly agreed; our acceptance shall be without any warranty regarding protest and solely on account of payment. Bills of exchange and checks shall only be considered as payment once they have been successfully redeemed.

### **§ 4**

#### **Delivery Time and Delays in Delivery**

4.1 In order for us to deliver by the agreed date we must have received in good time all documents, other information and any necessary permits and releases to be supplied by the contracting party. Punctual delivery is also dependent on receipt of any advance payments made by the contracting party. If these prerequisites are not met in good time due to reasons for which we are not responsible, the delivery dates shall be extended by a reasonable time.

4.2 Disruptions to operations due to *force majeure*, strikes and lockouts for which we are not responsible as well as shortages of supplies and raw materials shall entitle us to rescind the contract, although we have not performed our duties under it, where the aforementioned circumstances prevent, more than temporarily, the supply of goods or services and where moreover this was not foreseeable at the time the contract was concluded.

4.3 Punctual delivery by us is subject to our own suppliers having delivered the correct goods to us on time.

4.4 If we are late in supplying goods or services or if it becomes impossible for us to supply them, any claims for damages by the contracting party shall be limited in accordance with clause 11.

4.5 The contracting party shall not be entitled to rescind the contract due to delays in delivery for which we are not responsible. If the contracting party is entitled to rescind the contract due to a delay in delivery for which we are responsible, we shall be entitled to demand that it state in writing within a reasonable time limit whether it plans to rescind the contract or insist on delivery. If the contracting party fails to declare its intention within the reasonable time limit set for doing so, it must set us another reasonable time limit for the delivery of the goods. It may only rescind the contract after the time limit has expired and we have not delivered the goods.

4.6 If it was agreed with the contracting party that we would supply our goods or services not on a particular fixed date but within a certain period of time, then we shall be entitled to supply our goods or services even prior to the expiration of such period of time. If a fixed date has been agreed upon with the contracting party, we shall be entitled to supply the goods or services earlier by a reasonable amount of time if we have given the contracting party adequate notice of this. This shall not apply if the goods or services can only be supplied on the agreed date for reasons evident to us.

## **§ 5 Transfer of Risk**

5.1 The supply of goods shall be made "ex works", unless agreed otherwise.

5.2 The risk shall in all cases be transferred to the contracting party if it is late in accepting the supply of the goods or services in question.

5.3 At the request of the contracting party, we shall take out transport insurance for the goods supplied. The contracting party shall bear the costs for the insurance.

## **§ 6 Deliveries of Goods; Use of Third Parties**

6.1 Partial deliveries shall be permitted, if reasonable for the contracting party. This shall also apply to excess or short deliveries common to the trade.

6.2 If there is no agreement to the contrary, we shall select the lowest cost packing and shipping we are aware of, unless after a due assessment of the circumstances we deem the lowest cost packing and shipping type unsuitable for the goods or services supplied.

6.3 If the contracting party fails to accept the goods or services supplied or breaches other duties to cooperate, we shall be entitled to all of our statutory rights to claim damages and full compensation for additional expenses.

6.4 We shall be entitled to engage third parties to fulfil our duties.

## **§ 7 Provision of Consulting Services**

7.1 If we advise the contracting party regarding the suitability or usability of our products, it shall be obliged to provide us with all information and documents required for the consultation without our requesting same.

7.2 If we advise the contracting party in the set-up and/or installation of our products, irrespective of whether the set-up and/or installation is undertaken by the contracting party itself or by third parties, without any special agreement, this advice shall only be intended as a reply to specific questions related to the set-up and/or installation. Such advice shall not constitute any supervision on our part of the set-up and/or installation.

## **§ 8 Special Provisions for Set-up and Installation**

8.1 We shall only undertake the set-up and installation on the basis of separate agreements.

8.2 If we assume responsibility for the set-up and installation, the contracting party must provide at its own cost in due time all necessary specialized and auxiliary personnel, supplies, energy and water at the place where they will be used; in addition, it must provide any necessary utility connections, heating and lighting and make all other preparations necessary for the set-up and installation.

8.3 Moreover the contracting party must provide us with the necessary working space.

8.4 The contracting party must in all cases notify us of any potential risks and special circumstances at the time of the set-up and installation.

## **§ 9 Claims Made on Account of Material Defects**

9.1 All descriptions of the goods and services supplied shall constitute descriptions and not guarantees of quality. If we supply goods or services based on performance specifications, the quality of the goods and services to be supplied shall be described comprehensively in the performance specifications.

9.2 The contracting party may not reject a delivery due to minor defects. Deviations common to the trade shall not constitute defects.

9.3 The contracting party shall be obliged to carefully inspect the goods delivered without delay after their delivery. This shall also apply if we deliver them to a third party at the instruction of the contracting party. The goods delivered shall be considered as approved, if a defect which a careful inspection would have revealed, is not reported without delay. If the defect was not obvious upon careful inspection, the period for reporting it (in writing) in due time shall begin on the day it is discovered. If a defect is discovered prior to the use of the goods delivered, particularly prior to their being integrated into other goods, the contracting party must desist from any further use which would hinder or make it impossible to later inspect the goods and find the defect or which would hinder or make it impossible to remedy the defect or which would hinder or make it impossible to return the defective goods to us in connection with our supplementary performance obligations or which could cause damage to the goods delivered.

9.4 The contracting party must give us a reasonable opportunity to inspect a defect without delay during normal business hours. If a report of a defect is intentionally false or false due to gross negligence, the contracting party shall be liable for the damage incurred by us as a result.

9.5 We shall not be liable for defects arising through the improper use by the contracting party or third parties of the goods supplied by us. This shall apply in particular to those defects which are the result of incorrect integration into other goods. We shall also not be liable for the normal wear and tear of the goods supplied by us.

9.6 In the event of a material defect, we shall be obliged, at our choice, to either deliver replacement goods which are free from defects or remedy the defect (supplementary performance). As part of our supplementary performance, we shall be obliged to bear all necessary expenses, in particular for transporting replacement goods, travel in connection with remedying the defect, labor and materials, provided these do not increase due to the fact that the goods purchased were brought to a place other than the original place of delivery or shipment. This shall not apply if the transfer to another place is in conformity with the stipulated use of the goods delivered. If the form of supplementary performance chosen by us is the delivery of goods which are free from defects, the defective goods must be sent back to us freight paid; the contracting party shall be obliged to select the least expensive type of shipment.

9.7 If it is not possible to effect supplementary performance, the contracting party shall be entitled, at its choice, to rescind the contract, reduce the purchase price, claim damages instead of performance or demand reimbursement of wasted expenditure. The contracting party shall not be entitled to claim damages instead of performance or demand reimbursement of wasted expenditure due to minor defects. The existence of minor defects shall also not entitle the contracting party to rescind the contract. Supplementary performance shall be considered ineffective if we are not able to remedy the defect within a reasonable time limit set by the contracting party, if we fail to remedy the defect after making two attempts, if we seriously and definitely refuse to effect supplementary performance or if supplementary performance would be unreasonable for the contracting party. Our rights in accordance with § 275 of the German Civil Code (*Bürgerliches Gesetzbuch*) to refuse supplementary performance in a particular form shall not be prejudiced hereby.

9.8 If one form of supplementary performance has been unsuccessful so that the contracting party is entitled to choose either another form of supplementary performance or instead to exercise its statutory rights, we shall be entitled to request that it notify us of its decision within a reasonable time limit. The contracting party must notify us in writing of its decision. Decisive for the compliance with the time limit shall be our receipt of the contracting party's written notification. If the contracting party fails to exercise its rights in due time, it may only assert such rights, particularly the right to rescission or damages, if supplementary performance has not been successful within a new and reasonable time limit which it has set.

9.9 Claims against us on account of material defects shall lapse within one year of delivery to the contracting party or a third party nominated by it. The limitation of claims in accordance with this provision shall also apply to claims for damages due to the delivery of defective goods with the exception of claims based on intentional or gross negligent conduct or claims for damages caused by injury to life, limb or health. If the law provides for a longer limitation period with respect to construction work or the use of things for construction work, the statutory limitation period shall apply.

## **§ 10 Liability for Defects in Title**

10.1 If we are liable for defects in title in relation to the goods delivered, our supplementary performance shall not be the delivery of goods which are free from defects in title or the repair of defects. Instead our supplementary performance shall involve the acquisition of the relevant rights; the conclusion of a license agreement with the holder of the rights or a modification of the goods so that they do not violate legal rights as long as the contracting party can reasonably be expected to accept such modification. We shall be entitled to choose between the aforementioned forms of supplementary performance.

10.2 Otherwise, the provisions regarding material defects in clause § 9 of these Terms and Conditions shall apply *mutatis mutandis*.

## **§ 11 Limitation of Claims for Damages**

11.1 We shall be liable for the intentional or grossly negligent conduct of the organs of our company and our vicarious agents; our liability for damage caused by injury to life, limb or health shall exist irrespective of the degree of fault involved.

11.2 Moreover, we shall be liable for the slight negligence of the organs of our company and our vicarious agents in cases of impossibility, delay in performance, breach of warranty or breach of a fundamental duty. In these cases, our liability shall be limited to the usual contractual damage, which we could reasonably be expected to foresee at the time we concluded the contract.

11.3 Any liability on our part beyond the liability in accordance with clauses 11.1 and 11.2 of these Terms and Conditions, regardless of the legal reason involved, shall be hereby excluded. This shall apply in particular to all claims made on account of a breach of contract, *culpa in contrahendo* and tortious conduct.

11.4 All restrictions of liability in accordance with 11.1 to 11.3 of these Terms and Conditions shall also apply for the benefit of the organs of our company and our vicarious agents.

11.5 Any claims in accordance with the Product Liability Act (*Produkthaftungsgesetz*) shall not be affected hereby.

## **§ 12 Retention of Title**

12.1 We hereby reserve title to all goods delivered until all claims arising from the business relationship with the contracting party have been fulfilled, in particular until the current account has been balanced (right to a balanced account). In the event the contracting party breaches the contract, particularly in the event of a default in payment, we shall be entitled to rescind the contract if the contracting party has not performed within a reasonable grace period and to take back or attach any goods we have delivered. After taking back one or more items delivered, we shall be authorized to sell it/them; the sale proceeds must be credited towards the contracting party's debts to us following a deduction for our reasonable selling costs.

12.2 The contracting party shall be obliged to store the goods delivered on our behalf and to treat them carefully. If maintenance and inspection work is necessary the contracting party must conduct such work in due time at its own cost.

12.3 In case of attachment or other interference with the goods by third parties, the contracting party must notify us in writing without delay so that we can file an action pursuant to § 771 of the Code of Civil Procedure (*Zivilprozessordnung*). If the third party is unable to compensate us for court costs and/or extra-judicial costs pursuant to § 771 of the Code of Civil Procedure, the contracting party shall be liable for our losses.

12.4 The contracting party shall be entitled to resell the goods delivered in the ordinary course of business, but it shall not be entitled to convey title to them or pledge them as security. The contracting party hereby assigns to us in advance its claims in the amount of the final invoice (i.e. value added tax is included against its purchasers or third parties, which result from the resale of the goods. This assignment shall secure our claims in the same way as the retention of title provision in clause 12.1 of these Terms and Conditions. The contracting party shall be entitled to enforce the aforementioned claims even after they have been assigned. However, we shall be entitled to enforce the claims ourselves if the contracting party fails to meet its payment obligations, is late in payment, ceases payment or a request to open insolvency proceedings in respect of the contracting party is made. In the aforementioned cases, we may revoke the contracting party's authority to enforce the claims. We may moreover demand that the contracting party inform us without delay regarding the details of the assigned claims and the identity of its debtors, provide us with a written assignment of the claims, and provide us with all information and documents necessary for enforcing the claims.

12.5 If the goods delivered are inextricably mixed or combined with other goods not belonging to us, we shall acquire co-ownership rights in the ratio the value of the goods belonging to us (final invoice amount including value added tax) bears to the value of all of the mixed or combined goods. If the goods are mixed or combined in such a way that the

contracting party's product must be seen as the main product, the parties hereby agree that the contracting party shall transfer its ownership share to us on a prorated basis. The contracting party shall store on our behalf the goods belonging to us exclusively and the goods in respect of which we are co-owners.

12.6 The contracting party also assigns to us all of its claims, which secure our claims against its buyer or a third party, where the claims arise from the combination of the goods delivered with real property. Clause 12.4 of these Terms and Conditions shall apply *mutatis mutandis*.

12.7 We hereby agree to release the securities to which we are entitled at the contracting party's request to the extent that the realizable value of our securities exceeds the value of the claims to be secured by more than 10%. We shall be entitled to select which securities we wish to release.

### **§ 13 Final Provisions**

13.1 All legal relationships arising in connection with the conclusion, performance or termination of this contract shall be subject to the substantive law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

13.2 Rain am Lech shall be the place of performance.

13.3 The courts of Augsburg shall have exclusive jurisdiction for all litigation. However, we shall also be entitled to sue the contracting party at other venues laid down by statute if we wish to.

13.4 Clauses 13.1 und 13.3 of these Terms and Conditions shall only apply to merchants, legal persons under public law and public law funds.