

Version of 10 December 2002

General Terms and Conditions for Sales

I. Scope of the General Terms and Conditions for Sales

1. These General Terms and Conditions for Sales apply to the present and all future contracts with national customers of the company Helling & Neuhaus GmbH & Co. KG – hereinafter referred to as Neuhaus – involving predominantly the delivery of goods to the customer, by Neuhaus. Any obligations additionally assumed by Neuhaus shall not affect the validity of these General Terms and Conditions for Sales.

2. Neuhaus shall not be bound by conflicting or deviating general **terms and conditions of the Customer**, even if Neuhaus does not expressly oppose, or performs services or accepts services of the Customer without reservation notwithstanding any conflicting or deviating general terms and conditions of the Customer. Likewise, Neuhaus is not bound to the extent that the general terms and conditions of the Customer deviate from statutory provisions, regardless of the content of these General Terms and Conditions for Sales.

3. Conflicting or differing terms of business of the customer do not bind Neuhaus, even if Neuhaus does not object to them or even if Neuhaus unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these Conditions of Sale, deviate from statutory provisions.

II. Conclusion of sales contracts

1. Before concluding a contract, the Customer is obligated to **expressly point out to Neuhaus** if the ordered goods have to be suited not exclusively for customary use, or are used under unusual conditions or under conditions representing a particular health, safety or environmental risk or requiring increased load.

2. If the Customer's **order** deviates from the proposals or the offer provided by Neuhaus, the Customer shall particularly emphasize the deviations as such.

3. All orders accepted in particular also by employees of Neuhaus shall take effect **exclusively** by the **written order confirmation** of Neuhaus. The actual acceptance of ordered goods, other behavior of Neuhaus or silence does not entitle the Customer to rely on the conclusion of the contract. Neuhaus may issue the written order confirmation **up to the expiration of 14 calendar days** after the Customer's order was received by Neuhaus.

4. The written order confirmation of Neuhaus is decisive for the scope of the entire **content of the contract**. Subject to any objections of the Customer which are made at short notice and in writing, the written order confirmation of Neuhaus shall bring the contract into effect, even if it does not contain all topics on which the Customer wanted to make an agreement, or otherwise deviates from the statements of the Customer, in particular also with regard to the exclusive applicability of these General Terms and Conditions for Sales. Specific wishes of the Customer, in particular guarantees or other covenants with regard to the processing of

the ordered goods or the performance of the contract therefore require express written confirmation in each case.

5. The **employees** of Neuhaus as well as the commercial agents and other sales agents are not authorized to refrain from the requirement of the written order confirmation, or to enter into commitments with a deviating content, or to declare guarantees. **Modifications** of the concluded contract shall also require a written confirmation of Neuhaus.

III. Obligations of Neuhaus

1. Neuhaus must deliver the goods specified in the written acknowledgement of the order and transfer the property in the goods. Neuhaus is not obliged to perform obligations not stated in the written acknowledgment of the order by Neuhaus or in these Conditions of Sale, in particular Neuhaus is under no obligation to establish compatibility with services or products of other contractors, to supply documents, to furnish information or to deliver accessories not explicitly agreed upon in writing, to install additional safety devices, to carry out assemblies or to advise the customer.

2. Third parties not involved in the conclusion of the contract, in particular the customer's clients, are not entitled to request delivery to be made to them or to bring any other contractual claim against Neuhaus. The customer's responsibility to take delivery continues to exist even if he assigns rights to third parties.

3. Neuhaus undertakes to deliver goods of average kind and quality taking account of the tolerances customary in trade concerning the kind, quantity and quality. Neuhaus is entitled to make part deliveries and to invoice them separately. If the goods cannot be delivered in the condition offered at the time of the formation of the contract because technical improvements to goods of series production were made, Neuhaus is entitled to deliver the goods with the technical improvements.

4. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time periods begin on the date of the written acknowledgement of the order by Neuhaus. Neuhaus is entitled to deliver earlier than at the agreed delivery time.

5. Neuhaus is entitled to perform contractual obligations **after the scheduled date**, if the Customer is informed about the delay and a period for subsequent performance is notified to the Customer, unless subsequent performance is unacceptable to the Customer, or the Customer refuses the offer of subsequent performance within a reasonable period. In case of subsequent performance, Neuhaus shall refund the additional expenses of the Customer which are demonstrably necessary due to the delay, to the extent that Neuhaus is liable for damages according to the provisions of Section VII.

6: **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Neuhaus to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the

customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these Conditions of Sale remain applicable.

7. Neuhaus is not obligated to take back **packaging material** (transport, sales or other packaging) from the Customer. Notwithstanding any legal provisions, the Customer shall reuse, recycle or otherwise dispose of the packaging as prescribed otherwise at its own expense. The provision above shall apply regardless of whether the packaging is charged separately to the Customer or not.

8. Without waving any further statutory rights, Neuhaus is entitled to the **defense of uncertainty** according to § 321 of the German Civil Code (BGB) in particular if the Customer insufficiently performs its obligations to Neuhaus or third parties, or is slow to pay, or the limit set by a credit insurer is exceeded or will be exceeded with the forthcoming delivery. Instead of the defense, Neuhaus may make future works – including already confirmed works – dependent on prepayment. Neuhaus is not obligated to continue with its services as long as services provided by the Customer to avoid the defense do not offer sufficient security or may be subject to appeal.

IV. Price and payment

1. Notwithstanding any further obligations to secure or prepare payments, the compensation shall be **due for payment** upon the issue of the invoice. Periods granted for payment will cease to apply and receivables will be immediately due for payment if the opening of insolvency proceedings on the Customer's assets is applied for, if the Customer fails to meet material obligations owed to Neuhaus or third parties without a justified cause, or if the Customer has provided inaccurate information on its creditworthiness.

2. The agreed-on price shall cover the services to be rendered by Neuhaus, excluding packaging. In addition, the customer shall pay the applicable VAT, which is to be calculated separately.

3. Covenants for **cash discounts** must be shown in each individual case in the written order confirmation of Neuhaus, and shall apply only under the condition of timely and full payment.

4. The **payments** shall be transferred in EUROS without deduction and free of charge through the banking institution designated by Neuhaus. **Timeliness** of the payment depends on the time when the amount is credited to the bank account without reservation.

5. Neuhaus may **set off** incoming payments at its own discretion against the accounts receivable from the Customer by virtue of its own or assigned rights at the time of payment.

6. Rights of the Customer to **set-off** against the claims of Neuhaus are excluded, unless the counterclaim is founded in the Customer's own right and has either been legally established by a court or is due and undisputed or has been accepted by Neuhaus in writing.

7. Rights of the Customer to **withhold** the payment or to raise defenses are excluded, unless Neuhaus has materially violated obligations which are due to and arising from the same contractual relationship in spite of a written warning, and has not offered appropriate security.

V. Warranty

1. Without waiving the statutory exclusions or restrictions of responsibility of Neuhaus, the goods are considered to have a **material defect** if they deviate significantly from the kind, quantity or quality agreed in the written order confirmation, taking into account the provisions in Section III., or in the absence of agreed quality, if they deviate significantly from the quality customary in Rietberg, or if it is obvious that they are not suitable for the use which is customary in Rietberg. Changes in design, construction or material which reflect technical improvements do not constitute a lack of conformity with the contract. Second-hand goods are delivered without any liability for their conformity.

2. Unless expressly provided otherwise in the written order confirmation, Neuhaus is in particular **not responsible** to ensure that the goods are suitable for any use other than the customary use, or that they fulfill any further requirements of the Customer. Neuhaus is not liable for material defects arising after the time when the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Neuhaus in writing, Neuhaus will be released from his liability.

3. Also in case of follow-up business, **guarantees** or covenants requested by the Customer always have to be specifically shown in the written order confirmation. In particular keyword-style descriptions, reference to generally accepted standards and DIN standards, the use of trademarks or quality marks, or the submission of specimen or samples do not by themselves constitute the assumption of a guarantee or covenant. The employees of Neuhaus, commercial agents or other sales intermediaries are not authorized to be not entitled to grant guarantees or covenants or to make statements on special applications or on the economic viability of the goods.

4. The Customer shall **immediately** inspect each individual consignment in every respect for visible and typical quality, quantity and other kinds of deviations. Upon their **acceptance**, the goods are considered approved. The installation or any other use of the goods are considered acceptance. **Notices of defects** have to be made directly to Neuhaus immediately in writing and exactly stating their type and extent. The employees of Neuhaus, commercial agents or other sales intermediaries are not entitled to accept notices of defects or issue warranty-related statements.

5. In case of justified complaints, the Customer may request **subsequent performance** from Neuhaus in accordance with the statutory provisions within a reasonable period after notification of a defect. Neuhaus is not obligated to pay the expenses incurred for subsequent performance, if they are increased because of relocation or other modifications of the goods made after the notice of defects was sent. In case that subsequent performance definitely fails, is impossible or is not performed within a reasonable time, the Customer is entitled according to the statutory provisions to **reduce** the compensation or **withdraw** from the contract after setting a period and notice of refusal within a preclusion period of four weeks after expiry of the deadline. Notwithstanding the Customer's legal remedies, Neuhaus is always entitled to, as in accordance to Section III.-5, improve or replace faulty goods.

6. Subject to any written confirmed covenants to the contrary, and subject to fraudulent concealment by Neuhaus, the Customer does **not have any further claims** for defects. Claims for damages according to the provisions in Section VII. which are established by operation of law remain unaffected thereof.

7. Any claims of the Customer based on defects shall **fall under the statute of limitations** one year after commencement of the respective statutory limitation period. Claims for damages based on intent remain unaffected thereof.

VI. Withdrawal

1. In addition to the provision in Section VI., the **Customer is entitled** to withdraw from the contract, taking into account the relevant statutory provisions, if the services owed by Neuhaus have become impossible, Neuhaus is in delay with the performance of contractual principal obligations, or has otherwise breached duties established by this contract and Neuhaus is responsible for the delay or breach of duties according to Section VII.-1.-c). In order for a delay to be considered to exist, it is always necessary without waiving any further statutory requirements also in case of a specified delivery timeframe, to submit a separate written request directly to Neuhaus after the due date, to perform the service within a reasonable time.

2. Without waiving any further statutory rights, **Neuhaus is entitled** to withdraw from the contract without compensation if the Customer objects to the application of these Terms and Conditions for Sales, if the opening of insolvency proceedings on the Customer's assets is applied for, if the Customer fails to fulfill material obligations owed to Neuhaus or third parties without stating a justifying cause, if the Customer provides inaccurate information on its creditworthiness, if Neuhaus without fault is not delivered itself properly or in due time, or if Neuhaus is no longer able to perform its service obligations for other causes with means which are acceptable taking into account its own interests and the justified interests of the Customer, which can be identified upon conclusion of the contract, and in particular the agreed consideration.

VII. Damages

1. Except for the liability under the Product Liability Act for damages resulting from the culpably injury of the life, body or health, **Neuhaus is obligated to pay damages** within the scope of this contract and outside the contract without waiving the statutory requirements only in accordance with the provisions below. The following provisions shall also apply if any warranty obligations are violated and in case of default:

a) The Customer is primarily obligated in accordance with the provisions in Section III. to accept an offer for subsequent performance, and in accordance with the provisions in Section V and VI. to accept the **warranty-related remedies**, and may claim damages only for remaining disadvantages, but in no case instead of other legal remedies.

b) Neuhaus shall be liable only in case of culpable **breach** of material obligations and in case of intentional or grossly negligent breach of other **duties** owed to the Customer.

c) In case of liability, and taking into account the limits according to letter d), Neuhaus shall replace the proven **loss** of the Customer to the extent in which the loss was **foreseeable** for Neuhaus as a consequence of the breach of duty upon conclusion of the contract with regard to the occurrence and amount of the loss and could not have been avoided by the Customer. The Customer shall **inform** Neuhaus in writing before contract conclusion on any particular risks, risks of atypical losses and unusual amounts of loss.

d) **Neuhaus will not assume liability** for lost profit and non-material adverse effects. Apart from that, the **amount of compensation** based on default shall be limited to 0.5% for each completed week of default and a maximum of 5%, and based on other breaches of duty to 200% of the value of the services. This paragraph shall not apply to gross culpability of the bodies or executives.

e) Notwithstanding compliance with the statutory provisions and the provisions set forth in these Terms and Conditions for Sales, the Customer may only claim **compensation instead of performance** after having threatened Neuhaus with the refusal of accepting performance, and in the absence of performance having definitely refused performance to Neuhaus within a reasonable time after the threat of refusing acceptance.

f) The **limitation period** for contractual claims shall also apply to extra-contractual claims of the Customer against Neuhaus competing with contractual claims. Provided that Neuhaus is not liable on account of intent or the Customer's claim has not fallen under the statute of limitations before, taking legal action for damages is subject to a **preclusion period of 6 months**, commencing with the refusal of the payment of damages.

g) The provisions above on the liability of Neuhaus shall also apply to statutory claims of the Customer for compensation of **wasted expenses** and for the **personal liability** of the employees, workers, staff, representatives and vicarious agents of Neuhaus.

2. Notwithstanding any further statutory or contractual claims of Neuhaus, the **Customer** is **obligated to pay damages** to Neuhaus as follows:

a) In case of **delayed receipt of payment**, the Customer shall reimburse the legal costs of judicial and extra-judicial litigation as well as interest of 8% above the base rate of the European Central Bank.

b) Subject to the Customer's proof that no damage or only considerably less damage was suffered, Neuhaus shall be entitled in case of **delayed acceptance** or in the case of a release order for delivery which was agreed upon but not made by the Customer after setting a reasonable grace period, to claim **damages at a flat rate** of 15% of the respective delivery amount without proof.

VIII. Retention of title

1. The goods delivered shall remain the **property of Neuhaus** until any and all principal and subsidiary claims of Neuhaus against the customer, present or future, and arising for any given legal reason, have been settled in full. For current invoices, the retention of title shall secure the balance owed by the customer.

2. While the retention of title is in force, the customer shall facilitate **access** to the retained goods to Neuhaus staff at all times during ordinary working hours. The customer shall **insure**

the retained goods against theft, damage and destruction and, at Neuhaus's request, store the goods separately or isolate them in an appropriate manner, clearly **label** them as property of Neuhaus and take any required measures associated with **comprehensively guaranteeing the retention of title**. As a precaution, the customer hereby assigns any and all claims accrued against the insurance in full and irrevocably to Neuhaus; Neuhaus hereby accepts the assignment.

3. While the retention of title is in force, the customer shall **notify** Neuhaus in writing immediately should a third party assert any claims or rights to the retained goods or any claims assigned to Neuhaus in accordance with the regulations pertinent to the retention of title. The customer shall furthermore support Neuhaus in pursuing their interests without consideration. Should a **third party** acquire any rights to the retained goods while the retention of title is in force, any claims of the customer against the third party including any pertinent rights are hereby irrevocably assigned to Neuhaus as a security measure; Neuhaus hereby accepts the assignment.

4. The customer may only **sell** the retained goods within the scope of ordinary business and provided they are not in arrears with their payments. The customer shall not be entitled to any other dispositions (e.g. transfers for security purposes or pledges). As a security measure, the customer shall assign any and all **claims against their buyer** arising from selling the retained goods to Neuhaus in full and irrevocably, including any subsidiary rights. Should the customer include any claims arising from selling the retained goods in a **current account relationship** with the buyer, they shall assign any current account receivables after balancing to Neuhaus in full and irrevocably as a security measure; Neuhaus hereby accepts the assignments.

5. The Customer remains entitled to **collect** the claims assigned to Neuhaus on a **trust basis** on behalf of Neuhaus, provided that it is not in delay with its payments. The Customer is not entitled to assign the claims to third parties. The Customer shall record any incoming payments separately and immediately pass them on to Neuhaus until the secured claims of Neuhaus are fully satisfied. If payment is effected by transfer to the Customer's credit institution, the Customer herewith irrevocably assigns the claims it is entitled to against its credit institution to Neuhaus. If the Customer receives **bills of exchange** to settle the claims against third parties, it herewith irrevocably assigns the claims it is entitled to against its credit institution in case of discounting the bill of exchange to Neuhaus.

6. Neuhaus shall **handle and process** the goods as manufacturer within the meaning of Article 950 of the German Civil Code [*Bundesgesetzbuch, BGB*] without incurring any obligation on the part of Neuhaus. Should the goods delivered be **mixed, blended or connected** in a way that legally terminates the ownership of Neuhaus, the customer hereby transfers their right of full or partial ownership to the new item to Neuhaus in advance and shall store the item in question for Neuhaus without consideration and on a trust basis.

7. If necessary, the customer shall consult with Neuhaus as to what extent the goods are still subject to a retention of title. Neuhaus shall not be required to quantify the extent of the retention of title upon payment without being requested to do so. Should the customer still be in possession of any retained goods not yet paid for in full, Neuhaus shall **release goods** upon the customer's request, provided the invoice amount for the goods exceeds the amount of the open claims by over 20% and provided there are no outstanding preferential rights to the goods in favour of Neuhaus. This shall apply if claims against third parties have replaced

the retained goods and provided these claims are asserted by Neuhaus on their own behalf. Furthermore, Neuhaus shall release securities upon the customer's request, provided the market price of the securities exceeds the value of the secured receivables by more than 50% plus the VAT applicable for the utilization.

8. If any not fully paid under retention goods are still in the custody of the Customer and the opening of insolvency proceedings on the Customer's assets is applied for, or the Customer fails to fulfill its obligations owed to Neuhaus or third parties without stating a justifying cause, Neuhaus may **revoke the Customer's right to ownership** and demand the surrender of the goods without cancellation of the contract. Neuhaus is not entitled to demand surrender if the insolvency administrator decides to perform the contract and the price of the goods have been paid.

9. In case of withdrawal from the contract, in particular for delayed payment of the Customer, Neuhaus is entitled to **sell the goods in the open market** and satisfy its claims from the proceeds. Notwithstanding any other rights which Neuhaus is entitled to, the Customer is obligated to reimburse Neuhaus for the **expenses** of contract conclusion, for contract execution so far and dissolution of the contract, as well as the costs for the return of the goods, and pay a **user charge** of 1% of the value of the goods for each commenced month since the risk has passed.

IX. Other provisions

1. To comply with the **written form**, it is neither required to sign documents with one's own name nor with an electronic signature. Notifications by telex or e-mail comply with the written form as well as other forms of text, without it being required that the end of the statement is particularly identified as such.

2. Neuhaus shall **process the data** about the Customer obtained in connection with the business relationship as defined in the Federal Data Protection Act.

3. Without Neuhaus waiving any further rights, the Customer shall indemnify Neuhaus without restriction against all claims of third parties which are asserted against Neuhaus on the basis of **product liability** or other provisions, to the extent that the liability is based on circumstances which are established by the Customer or other third parties without the express written consent of Neuhaus, such as the presentation of the product. The exemption shall also include in particular the compensation of expenses incurred by Neuhaus, and shall be assured by the Customer waiving further preconditions or other defenses, in particular waiving compliance with monitoring and recall obligations, and waiving the defense of limitation.

4. Neuhaus reserves all property rights, copyrights, other industrial property rights and rights arising from know-how in any illustrations, drawings, calculations or other **documents** provided by Neuhaus in physical or electronic form as well as software. They shall be kept secret from third parties and must be used exclusively for the performance of the respective contract.

5. Notwithstanding any further statutory provisions, the suspension of the **limitation period** shall also end if the negotiations triggering the suspension are not continued for more than

four weeks. Any new start of the limitation period for claims of the Customer shall require the express written confirmation of Neuhaus in any case.

X. General contractual bases

1. **Place of performance**, payment and fulfillment of all obligations arising from the legal relationships of Neuhaus with the Customer shall be Rietberg. This provision shall also apply if Neuhaus performs services for the Customer at another place, or any services performed are to be restituted. Arrangements on who bears the costs shall not contain any modification of the above-mentioned provision on the place of performance.

2. Contractual and extra-contractual legal relationships with the Customer shall be governed **exclusively by German law** and the customs prevailing in Rietberg.

3. All contractual and extra-contractual disputes from or in connection with contracts to which these Terms and Conditions for Sales shall apply, will be finally settled according to the Rules of Arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS), with the exclusion of the ordinary course of law. The **arbitral tribunal** shall consist of three arbitrators, and in case of disputes with an amount of dispute of less than € 5,000 of one arbitrator. The place of the arbitration proceedings shall be Hanover, the language of the proceedings shall be German. However, Neuhaus is entitled in the individual case to take action also before the courts having jurisdiction for Rietberg or the state courts at the Customer's place of business or other courts having jurisdiction by virtue of law.

4. If any provisions of these Terms and Conditions for Sales should be or become fully or partially invalid, the other provisions shall remain effective. The parties are obligated to replace the invalid provision by a valid provision that comes as close as possible to the economic meaning and purpose of the invalid provision.

This English version of the General Terms and Conditions is not binding and for convenience and information purposes only. In all cases, the German language version shall prevail.