

## **General Terms and Conditions of Business of NPROXX Jülich GmbH**

### **1. Scope of application**

- 1.1 All present and future supplies, services and quotations of NPROXX Jülich GmbH (NPROXX) will be performed and provided exclusively on the basis of the Terms and Conditions of Business (the “Terms and Conditions”) set forth below, which shall only apply towards undertakings as defined in Section 14 BGB German Civil Code. NPROXX declares that it is only prepared to conclude contracts on the basis of these Terms and Conditions.
- 1.2 Terms and conditions of other parties to contracts which deviate from these Terms and Conditions shall only apply if they have been expressly accepted in writing by NPROXX.
- 1.3 By placing an order with NPROXX, these Terms and Conditions shall be deemed accepted by the other party. Counter-conformations of the other party and references to terms and conditions of its own which conflict with these Terms and Conditions are hereby rejected.
- 1.4 In order to be valid, anything agreed by word of mouth, warranties of properties, subsequent modifications to the contract or any waiver of the requirement of the written form must be confirmed in writing by NPROXX and the other party.

### **2. Offers/quotations and conclusion of contracts**

- 2.1 All offers/quotations are non binding and without engagement on our part.
- 2.2 A contract shall come into existence only on issue of a written order confirmation by NPROXX.
- 2.3 NPROXX reserves the right to charge for the preparation of extensive or complex offers/ quotations which require preliminary works on the basis of the expenses incurred by it or to agree a target price for the preparation of such quotations before starting work on them.
- 2.4 The other party has a duty to draw the attention of NPROXX during the offer/quotation phase to any special risks associated with the intended supplies and services that could result in loss or damage on an unusual scale. In the event of failure by the other party to do so, NPROXX shall have the right to cancel the concluded contract at any time during implementation of the order and to invoice the works already carried out or to submit a revised offer/quotation. NPROXX may on no account be held liable for errors resulting from documents submitted or other, imprecise, data provided by the other party or from failure by the other party to inform of risks or to furnish any permits or approvals as may be necessary.
- 2.5 Works which are not expressly provided for in an offer/quotation but are necessary, for the reasonable implementation of the order or are carried out upon the request of the other party will be invoiced and shall be paid for by the other party on customary terms.
- 2.6 Cancellation of an order which has already been placed is generally only permitted if the order has not yet entered the implementation phase. If part-deliveries or part-services have already been effected for the order concerned, payment must be made for them to NPROXX on the basis of the costs and expenses incurred by NPROXX.

### **3. Prices, terms of payment**

- 3.1 The prices stated in the order confirmation are authoritative. NPROXX reserves the right to modify prices by a reasonable amount if cost reductions or cost increases occur after conclusion of the contract, especially as a result of changes to labour costs, changes in material prices or exchange rate fluctuations in the case of materials purchased in foreign currencies. Evidence of such changes will be furnished to the other party on request. Services, and in particular installation, commissioning, maintenance and/or repair work as well as instruction and training sessions, will be invoiced in accordance at the hourly rates charged by NPROXX at the time in question.
- 3.2 Unless explicitly stated otherwise, all prices are quoted in EUR, exclusive of VAT, which will be added to the invoice at the statutory rate, ex works with carriage unpaid and, unless stipulated otherwise in the contract, exclusive of the costs for packing, transport and insurance, installation and commissioning.
- 3.3 Where payment in a foreign currency is agreed, exchange rate fluctuations shall be borne by the other party. Authoritative shall be the equivalent amount in EUR at the time of the offer/ quotation.
- 3.4 If no other period allowed for payment is indicated in the order confirmation, invoices are due and payable on the day of receipt without any cash discount or other deductions.
- 3.5 Advance payments may be agreed separately in the order confirmation in return for security provided by NPROXX in the form of a bank guarantee.
- 3.6 NPROXX is entitled, starting from the due date, to charge late-payment interest at a rate of 8 percentage points above the base interest rate p.a.; this shall be without prejudice to the right of NPROXX to claim for any higher actual loss or damage incurred by it.
- 3.7 NPROXX claims shall only be deemed fulfilled when NPROXX is free to deal with the consideration from the other party without restriction. A right of the other party to withhold payment is barred. The right of set-off is also barred except in respect of counterclaims which are undisputed or have been finally and absolutely established at law.

### **4. Delivery**

- 4.1 All deliveries are generally effected ex works. NPROXX is entitled at any time to indicate a different place of delivery. Part-deliveries are admissible, unless agreed otherwise.
- 4.2 The beginning of the delivery time indicated by NPROXX is conditional on all technical questions (nature and quality, tolerances, commissioning, test phase, purpose and contents of documentation to be supplied and the time of delivery thereof, as well as confirmation by the other party of the requirement specifications drawn up by NPROXX) having been resolved by that time.
- 4.3 Compliance of NPROXX with its delivery obligations shall be conditional on timely and proper fulfilment by the other party of its own obligations.
- 4.4 If a delivery date is not met, the other party has the right to grant a reasonable additional period of time and to cancel the contract if the additional time is allowed to expire without delivery being made. Further claims are expressly excluded. NPROXX is in all cases entitled to deliver in advance.
- 4.5 In the event of occurrence of any unforeseeable obstacles which, despite the exercise of all such care as is reasonable in the circumstances, cannot be averted and irrespective of whether they

occur at NPROXX or at one of NPROXX' suppliers (for example acts of official bodies, business interruption, strikes and lock-outs, etc.) the agreed delivery times shall be extended accordingly. NPROXX has a duty to inform the other party of such obstacles without delay. If such obstacles render delivery or the execution of the works impossible, NPROXX will be released from its duty to perform them.

- 4.6 In the case of delay in acceptance by the other party or if the other party acts in breach of any of its other duties to assist, NPROXX shall be entitled to claim for its loss or damage sustained, including any additional costs incurred. In this case, the risk of accidental loss or accidental deterioration in the delivered item shall also pass to the other party at the time of it falling into delay with acceptance.
- 4.7 In the case of delivery by NPROXX of a system, acceptance of it must be recorded in writing, the record to be signed by both the other party and NPROXX. Only after the acceptance record has been signed is the system deemed released for production operations.
- 4.8 Prior to acceptance, the other party is not entitled to use the system or any part of it. Should the other party nevertheless make use of it without any consent to such use having been given by NPROXX in writing, the system shall be deemed accepted and NPROXX shall in that case no longer be obliged to perform acceptance testing.
- 4.9 If a date and time for acceptance testing has been set by mutual agreement but the other party is not present or represented when testing takes place, the other party may not challenge the correctness of the record.
- 4.10 If the other party fails to accept the finished system by an agreed deadline despite the structure and function of the system being in line with the written order confirmation, NPROXX is entitled to allow a reasonable additional time for acceptance. If acceptance testing is also not conducted within this additional time, it will be deemed to have been performed successfully on the day specified as the day for the acceptance test.
- 4.11 In the case of installation or commissioning work, the other party has a duty to accept the supplied items immediately after notification of completion of the work. Unless expressly agreed otherwise, the acceptance must be confirmed in writing to the commissioning personnel of NPROXX.
- 4.12 Minor defects which do not affect the proper performance of the item concerned shall not constitute grounds for refusing acceptance.

## **5. Dispatch, passage of risk, disposal**

- 5.1 Unless expressly agreed otherwise, dispatch and transport are done for the risk of the other party. The risk shall pass to the other party as soon as the shipment has been handed over to the person performing transport.
- 5.2 If dispatch of the shipment is delayed due to reasons for which the other party is responsible, the risk of accidental deterioration and accidental loss shall pass to the other party on notification of readiness for dispatch. NPROXX shall also have the right, but not the duty, to insure the delivery item from that time, at the other party's expense, against the risks of breakage, transport and fire damage. Warehousing costs arising after the passage of risk shall be borne by the other party. This shall be without prejudice to any other claims to which NPROXX may be entitled.
- 5.3 The other party has a duty to take note of the information supplied by NPROXX relating to disposal of the delivery item and to ensure that disposal is done correctly in accordance with the legal regulations at the other party's expense.

## **6. Assembly, installation, commissioning**

- 6.1 For all types of assembly, installation and commissioning work by NPROXX, NPROXX will select and assign the personnel to their duties and set the daily working hours. NPROXX is entitled to have these activities performed by its own personnel or by third parties.
- 6.2 The other party shall grant NPROXX authorization to access the whole of the firm's premises by prior arrangement, also outside of normal working hours.
- 6.3 Upon starting the works, NPROXX will name a project manager to the other party who will be available as the contact person for the latter; should the project manager be unavailable at any time, NPROXX shall immediately provide a substitute.
- 6.4 The work of the personnel of NPROXX encompasses the setting-up of the system supplied by NPROXX, its installation and the test phase, the subsequent commissioning and presentation for acceptance, and the instruction and training of the persons designated by the other party who will subsequently operate and maintain the system.
- 6.5 Modifications to agreements already made relating to this area of activity must be discussed in advance with NPROXX and must always be commissioned in writing by the other party so as to ensure that the on-site personnel are correctly instructed by NPROXX.
- 6.6 The other party must take such measures as may be necessary to protect the people and materials at the installation site and to inform the staff of NPROXX about the existing safety installations insofar as they are relevant to the NPROXX personnel. NPROXX is entitled to check the occupational health and safety measures for compliance with comparable customary standards and, in the case of any complaint, to demand immediate remedy by the other party.
- 6.7 Before the start of installation, the other party must, without any request to this effect being necessary, provide all information relating to structural matters (where applicable) and to inform NPROXX of the location of electricity, gas and water lines.
- 6.8 If performance provided by the other party does not meet the specified tolerances, the other party must effect remedy immediately. The additional costs thereby caused to NPROXX in the pre-acceptance phase and during final installation shall be borne by the other party and will be invoiced additionally.

## **7. Warranty**

- 7.1 The warranty period for all delivery items, systems or modules supplied to the other party is 12 months starting from the date stated on the delivery note or the date of commissioning, and 24 months if a maintenance contract is concluded with NPROXX.
- 7.2 The other party shall give NPROXX the possibility to inspect any defects claimed and to categorise them as such where applicable. NPROXX shall have the right to decide whether to remedy a defect itself or to have it remedied by an authorized third party, or whether to have the defective delivery item or parts returned to it for repair or to repair the item or parts in situ or to replace the item or parts.
- 7.3 The obligation to provide warranty only applies to defects that occur despite compliance with the specified operating conditions and the preventive maintenance requirements and in normal use. Exempted from warranty are defects caused by faulty set-up or installation by the other party or its appointees, faulty servicing and maintenance, faulty repairs or repairs carried out without the

written approval of NPROXX or modifications carried out by third parties, acts of God or normal wear and tear.

- 7.4 The warranty shall in particular not apply if the items or systems supplied are used in areas other than those specified by NPROXX in the requirement specifications.
- 7.5 All other claims of the counterparty, specially claims for compensation for damage sustained either by the delivered item itself or anywhere else, are excluded unless they are the result of wilful intent or gross negligence on the part of NPROXX.
- 7.6 NPROXX shall be released from its duty to perform any work under warranty for as long as the other party is in arrears with any payments owed to NPROXX.

## **8. Liability**

- 8.1 The contractual and legal liability of NPROXX and its appointees is limited to gross negligence and wilful intention, as well as to direct loss or damage.
- 8.2 NPROXX will not assume any liability for indirect loss or damage, such as loss of production, loss of interest, loss of profit and such like.
- 8.3 Where the limitation of liability pursuant to paragraph 1 does not apply in cases of claims on grounds of producer liability for physical damage pursuant to Section 823 BGB, the liability of NPROXX shall be limited to the amount of compensation paid by the insurer. If the latter pays either not at all or only in part, the liability shall be limited to the amount of cover for liability.

## **9. Retention of title**

- 9.1 NPROXX retains title to delivered items until all claims arising on any legal grounds whatsoever from the legal relationship underlying the delivery have been satisfied in full. In the case of any breach of contract by the other party, and in particular any default of payment, NPROXX is entitled to repossess the delivered item. Repossession of a delivered item by NPROXX shall not be construed as cancellation of the contract unless NPROXX has expressly stated otherwise in writing. After the repossession of delivered items, NPROXX is entitled to realize their value. The sale proceeds shall be credited towards the amount owed by the other party after the deduction of a reasonable portion to cover the costs of sale.
- 9.2 The other party has a duty to treat the delivered items with care and in particular to insure them, at its own expense, adequately at their nominal value against the risks of damage by fire, water and theft. If maintenance and inspection work is necessary, the other party must perform such work in good time at its own expense.
- 9.3 In the case of attachment or other intervention by third parties, the other party must inform NPROXX without delay so as to enable NPROXX to bring legal action pursuant to Section 771 ZPO [German Code of Civil Procedure]. If the third party is not able to refund to NPROXX for the court costs and out-of-court costs incurred by the latter in the proceedings pursuant to Section 771 ZPO, the other party will be held liable for the loss or shortfall sustained.
- 9.4 The other party is entitled to resell the delivered items in the ordinary course of business. It hereby assigns to NPROXX, up to the agreed total amount (including VAT), all claims accruing to it through resale against its customers or third parties, irrespective of whether the item is resold with or without further processing. The other party remains authorized to collect the claims, while NPROXX also has the right to collect the claims itself. NPROXX undertakes, however, not to collect the claims itself for as long as the other party fulfils its payment obligations out of the sale

proceeds earned, is not in delay with any payments, is, in particular, not the subject of any insolvency proceedings and has not suspended payments. In any of the aforesaid cases, however, NPROXX may demand that the other party disclosure of the assigned claims and the debtors by whom they are owed, furnish all information needed for collection, release the appurtenant documents and notify the debtors (third parties) of the assignment.

- 9.5 All processing or modification of a delivered item by the other party shall be deemed done on behalf of NPROXX. The expectant right of the other party to the delivered item shall be carried over to the processed or modified item. If the delivered item is processed together with other items not belonging to NPROXX, NPROXX shall have co-title to the new item in the same proportion as that between the objective value of the delivered item and the value of the other items involved in processing at the time of processing. The same shall apply to the new item resulting from processing as applied to the item delivered subject to the retention of title.
- 9.6 If the delivered item is inseparably mixed with other items not belonging to NPROXX, NPROXX shall have co-title to the new item in the same proportion as that between the objective value of the delivered item and the value of the other items involved in mixing at the time of mixing. If the mixing is done in such a way that the item of the other party must be seen as the main item, it is agreed that the other party shall assign a proportionate co-title share to NPROXX. The other party shall preserve the exclusive property or the co-owned property so created on NPROXX's behalf.
- 9.7 As security for the claims of NPROXX against the other, the other party also assigns to NPROXX the claims accruing to the other party from a third party from the connection of the delivered item with an item of real property.

## **10. Copyright, confidentiality**

- 10.1 In cases where work or services consist in the provision of technical consultancy and in particular in the development of technical solution proposals, the production of drawings or the development and improvement of products, NPROXX reserves all proprietary rights thereto. This shall apply in particular to intellectual property (software etc.) of NPROXX, but also to its physical property such as drawings, offer/quotation documents, specimen systems and models and in particular any documents which are designated as "confidential". Utilization, reproduction, distribution and hand-over to third parties as well as publication and presentation shall in every case require the express written consent of NPROXX. The costs for the loss or damage caused by any violation will be charged to the other party in the amount of the loss or damage or in an amount of EUR 100,000.00 at least.
- 10.2 Any disclosure, even if for viewing purposes only, any type of re-use or replication (whether in whole or in part) as well as any use of the know-how of NPROXX, including also in offer/ quotation documents, is prohibited and shall oblige the other party, without prejudice to any other claims which NPROXX may have, to surrender to NPROXX the items so produced or obtained.
- 10.3 Where NPROXX supplies controls, systems or components according to the specifications or documents of the other party, the other party warrants that they are not in breach of proprietary rights of any third party and undertakes to indemnify and hold harmless NPROXX against all claims.
- 10.4 Unless expressly stipulated otherwise in writing, the information provided to NPROXX in connection with orders shall not be deemed confidential except where the confidential nature of the information is clear.

## **11. Limitation of claims**

All claims of the other party, regardless of the legal grounds on which they are made, shall lapse 12 months from the passage of risk, provided the law does not mandatorily specify longer terms under Section 438 (1) No. 2 BGB (construction works and items for construction works), Section 479 (1) BGB (recourse claims) and Section 634a (1) BGB (construction defects). For wilful or fraudulent conduct, the statutory time periods shall apply.

## **12. Legal venue, place of performance, choice of law**

- 12.1 German law only shall apply between the parties to the contract (including, if possible, also in cases where the other party is non-German), application of the United Nations Convention on Contracts for the International Sales of Goods and the conflict-of-law rules of German international private law being barred.
- 12.2 The invalidity of any of the provisions of these Terms and Conditions or of any other contract concluded with the other party or the existence of an omission shall have no effect on the validity of any of the other provisions of the contract. The parties to the contract undertake to agree in place of the invalid or missing provision one which is legally admissible and which most nearly corresponds in economic outcome to that intended by the invalid or missing provision.
- 12.3 Unless indicated otherwise in the order confirmation, the legal venue and place of performance shall be the place of business of NPROXX, whereby NPROXX shall also have the right to bring claims at other courts which have competent jurisdiction for the other party.

Jülich, 1 October 2018