

### 1. General Regulations

The following General Terms and Conditions ("GTC") shall apply for the contractual relationship with merchants in the scope of their business activity and with legal persons under public law including special funds under public law ("Customers"). The deliveries, performances and offers of Nagase are based on these GTC.

Any deviating, conflicting or supplementary terms and conditions of the Customers are opposed, unless Nagase expressly agrees to their application in writing. If Nagase makes reference to a letter containing or referring to the terms and conditions of a Customer or a third party, this does not constitute agreement with the validity of those terms and conditions. Similarly, no agreement with these terms and conditions shall be deemed to have been given if Nagase executes an order without reservation in the knowledge of conflicting or supplementary terms and conditions of the Customer.

These GTC replace all former general terms and conditions.

### 2. Offers

All offers of Nagase are subject to change and non-binding, unless they are expressly marked as binding or contain a specific period of acceptance. This shall also apply if Nagase sends the Customer catalogues, samples, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form.

### 3. Copyright / Technical Documents

All plans, drafts, scheme (diagrams) respectively connection-scheme (connection-diagrams), cost estimates and other technical documents and the rights herein remain property of Nagase. They may not be reproduced, copied or otherwise disclosed to a third party or be used in order to manufacture products or components thereof. When there is no contract concluded after the offer was made, the documents must be given back to Nagase.

### 4. Orders and Confirmations

Orders of Customers are legally binding contract offers. Unless otherwise stated in the order, Nagase shall be entitled to accept an order within ten (10) days after receipt. Acceptance can be declared either in writing (written or text form, e.g. by order confirmation) or by delivery of the goods to the Customer. The acceptance and the implementation may be subject to a security deposit or a payment in advance.

### 5. Quality, Sample, Analysis

Nagase does not give any guaranty ("Garantie") that the delivered products correspond to samples or indicated specifications, unless Nagase explicitly grants a guarantee in writing.

### 6. Prices

Additional or special services will be charged separately. Quotations are non-binding. Unless otherwise agreed in writing (text form suffices), the prices are stated in Euro, net and ex works. Costs for package, freight, insurance and value-added tax as well as in case of export deliveries, customs duties, fees and other public charges will be added to the price. The amount of the invoice shall be paid in the currency indicated in the agreement.

If, after conclusion of the contract the costs of the Nagase's performance of the contract change significantly, Nagase and the Customer shall be obliged to agree on an adjustment of the prices. If no agreement can be reached within one month, the price shall be fixed by an expert to be determined by the Chamber of Industry and Commerce Düsseldorf. The costs incurred in this connection shall be borne equally by the parties.

### 7. Terms of Payment

In case a customized product is ordered, Nagase is only obliged to deliver such product after prepayment by the Customer. In all other cases, the payment of the invoice has to be made without any deduction within thirty (30) days after the invoice date. Cheques and bills of exchange shall be accepted on account of payment but not in lieu of payment.

The Customer is entitled to assert claims based on a setoff, retention and price reduction, only if its claim is non-controversial, approved, has become res judicata or is ripe for adjudication, or such asserted claims result from the same contractual relationship (*Konnexität*) as Nagase's claim for payment. The assertion of a right of retention due to own counterclaims requires in any case that the counterclaims are based on the same contractual relationship.

### 8. Retention of Title

Nagase reserves the title in all goods delivered until the Customer has paid and / or settled all present and future accounts receivable arising from the business relationship and all payments in cheques and bills of exchange are redeemed.

Until revocation in accordance with c. below, the Customer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.

- a) The retention of title shall extend to the products resulting from the processing, mixing or combination of the goods of Nagase at their full value, whereby Nagase shall be deemed to be the manufacturer. If the right of ownership of third parties remains in force in the event of processing, mixing or combination with goods of third parties, Nagase shall acquire co-ownership in the ratio of the values of the processed, mixed or combined goods. In all other respects, the resulting product is subject to the same provisions as the goods delivered under reservation of title.
- b) The Customer hereby assigns to Nagase as security all claims against third parties arising from the resale of the goods or the product, in total or in the amount of Nagase's possible co-ownership share in accordance with the above paragraph. Nagase accepts the assignment.
- c) The Customer remains authorized to collect the accounts receivable. The right of Nagase to collect the accounts receivable itself is not affected hereby. Nagase however undertakes not to collect the accounts receivable as long as the Customer ordinarily fulfils his payment obligations as well as other core contractual obligations and there is no lack of its ability to pay and Nagase does not exercise its reservation of title. Should Nagase be entitled to collect the accounts receivables itself, Nagase can demand the Customer to inform Nagase about the assigned accounts receivable and the debtors as well as to provide all information needed for their collection and to surrender all necessary documents as well as to notify the debtors of the assignment. Furthermore, in this case Nagase is entitled to revoke the Customer's authority to further sell and process the goods.

The goods subject to retention of title, products resulting from the processing, mixing or combination as well as claims assigned to Nagase as security may not be pledged to third parties or transferred by way of security before full payment, settlement or, respectively; redemption of the secured claims. The Customer shall notify Nagase immediately in writing if an application is made to open insolvency proceedings or if third parties seize the goods or products belonging to Nagase or, respectively, the claims assigned to Nagase. In the event of access by third parties to the goods or products subject to retention of title or, respective, assigned claims, the Customer shall take all necessary measures (i) to avoid that the goods and products subject to retention of title or, respective, assigned claims are affected by such access, in particular to point out the ownership of Nagase and (ii) to cancel the attachment of goods and products subject to retention of title or, respectively, assigned claims. The Customer shall be jointly and severally liable with the third party for the reimbursement of the court and out-of-court costs of a lawsuit in accordance with § 771 German Civil Procedure Code.

If the realizable value of the securities exceeds 110% of the claims, Nagase shall release securities of his choice at the Customer's request.



#### **9. Guaranty, Warranty and Liability**

- a) Guarantees, contractual penalties and lump-sum damages do not exist.
- b) Products which turn out to have been defective at the time of transfer of risk are – at the discretion of Nagase – either repaired or replaced free of charge by Nagase. Replaced products shall become the property of Nagase. Section 377 of the German Commercial Code applies.
- c) In case of defects of components of other manufacturers, which Nagase cannot eliminate for reasons of licensing law or factual reasons, Nagase will, at his choice, either assert his warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against Nagase shall only exist for such defects if the legal enforcement of the aforementioned warranty claims against the manufacturer and supplier was unsuccessful or, for example due to insolvency, is futile. During the duration of the legal dispute the limitation of the relevant warranty claims of the Customer against Nagase shall be suspended.
- d) Warranty claims shall lapse if, without the consent of Nagase, the Customer modifies the delivered product or has it modified by third parties not in accordance with the normal way the product is used and due to that the remedying of the defect becomes impossible or unreasonably difficult. In any case, the customer shall bear the additional costs of remedying the defect arising from the modification.
- e) Nagase is liable for damages – regardless of the legal grounds – in case of intent and gross negligence. In case of simple negligence, Nagase shall only be liable, subject to statutory limitations of liability (e.g. care in one's own affairs; minor breach of duty),
  - a. for damages resulting from injury to life, body or health
  - b. for damages resulting from the violation of an essential contractual obligation (an obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner regularly relies and may rely); in this case, however, the liability of Nagase is limited to the compensation of the foreseeable, typically occurring damage.

Nagase is not liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events that could not be foreseen at the time of conclusion of the contract (e.g. wars, nature catastrophe, epidemics, terrorism, operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lock outs, lack of workers, energy or raw materials, difficulties in procuring necessary official permits, disposition of domestic and foreign authorities, official measures or the failure of suppliers to deliver in time, to deliver at all or to deliver correctly) for which Nagase is not responsible. Insofar as such events make it considerably more difficult or impossible for Nagase to deliver or perform and the hindrance is not only of a temporary nature, Nagase shall be entitled to withdraw from the contract.

Insofar as Nagase provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of performance owed by Nagase, this shall be done free of charge and to the exclusion of any liability.

The limitations of liability shall also apply in the event of breaches of duty by or in favour of persons whose fault Nagase is responsible for according to statutory regulations.

The limitation of liability resulting from this paragraph shall not apply if Nagase has fraudulently concealed a defect or has assumed a corresponding guarantee and for claims of the Customer according to the Product Liability Act.

- g) In case of omission of the basis of the transaction ("Wegfall der Geschäftsgrundlage") or in case it turns out after the conclusion of the contract that the performance is impossible, the contract will be appropriately adjusted. As far as this is not justifiable in the economic sense for Nagase, Nagase is entitled to entirely or partly rescind the contract. If Nagase intends to rescind the contract, it has to inform the Customer immediately after Nagase has become aware of the omission of the basis of the transaction or impossibility, even if an extension of the time for delivery has been agreed upon with the Customer. Vice versa, if the Customer wants to rescind the contract, it has to inform Nagase immediately after becoming aware of the reason for such rescission.

#### **10. Statute of limitation**

The mutual claims under a contract become time-barred twelve 12 months after the delivery of the product or, respectively, if applicable, the acceptance of the product. This period shall not apply to claims for damages by the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty or product liability by Nagase or its vicarious agents, which shall be time-barred in accordance with the statutory provisions. In case the product has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building, related warranty claims become time-barred five (5) years upon delivery of the product.

#### **11. Export**

Articles which are subject to an export/ re-export prohibition must not be exported by the Customer. The Customer will impose a corresponding proscription on its own customers as well as an obligation to impose corresponding proscriptions to their customers. Export/ re-export prohibitions will be indicated on the invoice or on the delivery note, if Nagase is obliged to make such notice under contract or statutory law.

#### **12. Scope of Delivery, Export and Packaging**

Nagase reserves the right to vary the scope of delivery up to +/- 5 %, if the safe and faultless transport of the products requires barrels or repositories as palettes containers or tanks. The price will be correspondingly increased or, respectively, decreased, if the deviation is higher than +/- 0,5%.

Counting, measuring and weighing which were performed in the factory of Nagase or dispatching stock location shall be the determining factor for the calculations. The Customer is free to prove deviating amounts, measures and weights, though.

Packages that are invoiced will not be taken back by Nagase unless the German Packaging Act (VerpackG) applies. If the German Packaging Act applies, the Customer must return packages at the place where the products had been handed over to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. The Customer has to bear the costs related to the take back and potentially disposal of packaging. Markings that Nagase puts on packages shall not be removed.

#### **13. Transfer of Risk and Delivery**

The risk ("Preisgefahr" and "Sachgefahr") of loss or deterioration of a product and of delay is passed to the Customer and the delivery is considered as fulfilled upon handover of the products to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment (ex works). All costs that arise from transport, transfer, storage or delay of means of transports of various kinds, loading or unloading, as well as the loss or damage of a product are borne by the Customer. The Customer or its agent has the duty to observe the legal regulation for transport, storage, loading, unloading of goods, in particular dangerous goods.

The same applies to the provided not-invoiced dispatch equipment. The Customer bears the risk until this equipment is returned to the factory of Nagase. In particular, the Customer is obliged to indemnify Nagase for any damages due to the damage or loss of such dispatch equipment. The agreed rental fees as well as the fees for delay have to be paid until the equipment for dispatch is returned. If the equipment has been returned damaged, the fees must be paid until the equipment is fully restored. In case the equipment was lost, the fees must be paid until substitutes have been sourced.

#### **14. Period of Delivery**

Nagase endeavours to set the delivery dates precisely and to meet these delivery dates even if unforeseen difficulties may occur. Nevertheless, indicated delivery dates are not binding and considered as target deadlines unless otherwise agreed. The mere expiry of such a non-binding deadline does not entitle the Customer for a claim of damage. Keeping the delivery deadlines requires that the Customer complies with its obligation to cooperate in time especially concerning the provision of necessary specifications. If the Customer does not comply with its obligation to cooperate, the delivery will be stopped or postponed. Nagase reserves the right for partial delivery as far as it can reasonably be deemed acceptable to the Customer. If the dispatch is delayed or temporarily impossible for reasons that Nagase is not responsible for (e.g. fault of Customer or transport



agency, acts of god, order of public authority) Nagase is entitled to store the goods on expense of the Customer. If the order has been changed subsequently by the Customer, the period of delivery will be adapted appropriately as far as the change delays the delivery.

If products are not called by Customer within a set reasonable period of delivery, Nagase is entitled to rescind in regard to these products from the order without prior warning, whereby Nagase will refund the purchase price of the products whose delivery has been cancelled, but is entitled to reclaim the price reduction given in regard to the cancelled delivered quantity.

#### **15. Technical Information, Danger and Preventive Measures**

The Customer declares to inform itself independent from potential information received from Nagase about all kinds of danger that can be caused by the product or its transport or its storage and about preventive measures. The Customer warrants that it passes on all the security related information that it is given from Nagase to its customers and employees and all persons who transport, store, work or otherwise handle these products.

#### **16. Confidentiality**

- a) The Customer undertakes to maintain secrecy towards third parties with regard to all disclosed business secrets, in particular of a technical and economic nature, as well as other confidential information that is disclosed or comes to the knowledge of the Customer during the contract negotiations or during the term of this contract including e.g. the submission and content of offers. This obligation of secrecy shall also apply after termination of the individual agreements until the information becomes publicly knowledge, regardless of the circumstances that led to termination.
- b) Documents relating to trade secrets and/or confidential information shall be returned to Nagase without delay as soon as they are no longer required, but no later than after the end of the respective individual agreement or shall be demonstrably destroyed at the request of Nagase. If documents containing confidential information have been made available in electronic form, the corresponding data must be deleted or – if deletion is not technically possible – permanently blocked.
- c) The obligation of confidentiality shall not apply
  - for such information which was demonstrably already known to the Customer before its disclosure, which was demonstrably independently compiled by the Customer or otherwise lawfully obtained by the Customer or which is generally known or becomes generally known without violation of the contract(s) with Nagase;
  - in the case of disclosure to persons who are subject to a statutory duty of confidentiality and insofar as the disclosure is necessary to establish and maintain proper business management or to safeguard legitimate interests, in particular if the disclosure is necessary to fulfil a statutory duty.
- d) The Customer shall impose the confidentiality obligations under this section on its employees, subagents or other auxiliary persons.
- e) For each case of culpable violation of the obligations set forth in this Section 16, the Customer shall be obliged to pay to Nagase a contractual penalty to be determined by Nagase at its reasonable discretion and, in the event of a dispute, the amount of the penalty shall be reviewed by the competent court, but shall not be less than EUR 5,001. In order to determine an appropriate amount of the contractual penalty, the Customer is obliged to provide Nagase with information on the extent of the breach of contract. In the event of a continued violation, each month or part of a month of such violation shall be deemed a separate violation. The latter shall apply in particular if the confidential information is disclosed to an undefined circle of addressees, e.g. by publication on the Internet. The right to damages remains unaffected, whereby the contractual penalty represents the minimum amount of damages and any contractual penalty due will be set off against the damages claimed.

#### **17. Jurisdiction / Governing law**

The Law of the Federal Republic of Germany excluding the Convention of the international Sale of Goods of the United Nations (CSIG from 11<sup>th</sup> April 1990 in the effective version) shall apply. Place of jurisdiction shall be Düsseldorf. The place of performance for all mutual obligations is the premises of Nagase.