

# STANDARD TERMS AND CONDITIONS OF SALE -1-



## 1. Scope

1.1 These Standard Terms and Conditions of Sale (hereinafter also referred to as "Standard Terms of Sale") shall apply to all deliveries of goods and the provision of services and offers to customers (hereinafter also referred to as "Purchaser") of NORO Gesellschaft für Rohrsysteme mbH (hereinafter also referred to as "NORO"). In particular, these Standard Terms and Conditions of Sale shall apply to contracts for the sale and/or supply of movable items (hereinafter also referred to as "goods") whether or not NORO is the producer of the goods or purchases the goods from vendors (§§ 433, 651 German Civil Code (Bürgerliches Gesetzbuch – "BGB"). These Standard Terms of Sale shall only apply if Purchaser is an entrepreneur (as defined in § 14 BGB), a legal entity under public law or a special fund under public law.

1.2 These Standard Terms of Sale shall apply on an exclusive basis. NORO hereby expressly objects to any deviating, conflicting or additional terms of Purchaser. Such terms will not form part of the contract unless and except to the extent NORO has given its express written consent to their applicability. NORO's consent shall be required in any event, including if NORO, notwithstanding its being aware of any deviating, conflicting or additional terms of Purchaser, executes the contract or makes deliveries or provides services to Purchaser. These Standard Terms of Sale shall be deemed accepted no later than upon Purchaser's acceptance of the goods or services delivered or provided by NORO.

1.3 These Standard Terms of Sale as amended from time to time shall operate as master agreement for any future contracts made with the same purchaser without a requirement for NORO to invoke their application in each single case. NORO will inform Purchaser of any amendments to its Standard Terms of Sale.

## 2. Offer, execution of contract, contract substance

2.1 All offers made by NORO, whether orally or in written form, are without engagement and non-binding and do not bind NORO to execute a contract or to make deliveries or provide services unless the offer has been expressly marked as binding or states a specific period of acceptance.

2.2 Purchaser ordering the goods or services shall be a binding offer to enter into a contract. Except as otherwise stated in the order, NORO has the right to accept the offer to enter into a contract within fourteen (14) days of its receipt. Acceptance by NORO may be declared either in written form (for example by acknowledgment of order) or by delivering the goods or providing the services to Purchaser.

2.3 Purchaser has the obligation to review NORO's notice of acceptance (for example NORO's acknowledgment of order) for accuracy and completeness and to notify NORO of any deviations from its order no later than five (5) days of receipt of the notice of acceptance; failing such notification by Purchaser, any deviating substance of the notice of acceptance shall be deemed accepted by Purchaser.

2.4 A written contract or NORO's written acknowledgment of order is decisive to define the substance of any contractual agreements. Except for managing directors or authorized officers (Prokurist), no agents of NORO may give any quality or durability guarantees or other guarantees or enter into agreements that deviate from these Standard Terms of Sale. The effectiveness of any such agreements is subject to written confirmation by NORO. NORO has no obligation to perform consultancy or installation services unless such services are expressly stated in its acknowledgment of order. Any goods or services that NORO is to deliver or provide beyond the scope stated in the acknowledgment of order and that NORO is not required to deliver or provide by law shall be subject to extra payment by Purchaser.

2.5 All information contained in offers, quotations, acknowledgments of order, catalogues, dimension sheets and other technical documents (e.g., weights, measurements, service values, stability under load, tolerance levels and technical data) is merely approximate and will be binding only if the binding nature has been expressly agreed upon or if usability for the contractually intended purpose requires accurate conformity. Such information does not qualify as quality or durability guarantee but is merely to describe or identify the goods to be delivered or the services to be provided. Customary deviations or deviations that are due to technical regulations or that are technical enhancements as well as substituting component parts with equivalent parts shall be allowed unless such deviations or substitutions affect the usability for the contractually intended purpose. No liability can be inferred from catalogues or technical documents as to the usability of the goods in a particular instance, and the risk of usability rests on Purchaser.

2.6 NORO has the right to invoice Purchaser for preparing offers, quotations, cost estimates or designs. When Purchaser places the order, invoicing these services may be dispensed with.

## 3. Prices

3.1 Prices are as stated in the acknowledgment of order and apply to the goods to be delivered and the services to be provided according to the acknowledgment of order. Additional deliveries of goods or the provision of additional services will be charged additionally. Except as otherwise agreed from time to time, all prices are EXW (ex works Kruppstraße 1, 49453 Rehden, Germany) in accordance with the INCOTERMS as amended from time to time, plus freight/postal charges, packaging and insurance, each item plus statutory VAT at the applicable rate, customs duties (in the case of exports) as well as fees and other public levies. Any increase in the VAT rate that may occur between the time of the order and the time of delivery shall be at Purchaser's expense.

3.2 Prices will be charged on the basis of the levies, commodity prices and costs including costs of materials, resources, energy, labour, transport and other items (hereinafter collectively referred to as "costs") that apply on the date the contract is entered into. If costs decrease or increase between the date the contract is entered into and the date of delivery or performance, NORO has the right to adjust its prices to match the effective variation in costs that has occurred as at the date of delivery or performance. NORO may not adjust a price if (i) the price has been expressly agreed upon in writing as being a fixed price or (ii) the agreed period of delivery or performance does not exceed a period of six (6) weeks of the execution of the contract unless delivery or performance is delayed by more than six (6) weeks of the execution of the contract for reasons that are solely in Purchaser's control or sphere of risks. At Purchaser's request, NORO will provide documentation in support of such variation in costs.

## 4. Payment terms and rights of retention

4.1 Except as otherwise agreed from time to time, amounts invoiced are payable on delivery and provision of the invoice, without any deduction. Payment is not deemed to have been made until NORO can dispose of the funds. If payment is made by cheque, payment is not deemed to have been made until the cheque has been cashed. If Purchaser is in default, NORO may claim default interest at the then applicable statutory rate from the time of default. NORO reserves the right to claim compensation for any higher default damage beyond the default interest.

4.2 If NORO notices any circumstances that question Purchaser's credit standing, especially if a cheque cannot be cashed or if Purchaser discontinues its payments, NORO has the right to declare the remaining liabilities to be due as a whole. In that event, NORO may further demand advance payment or provision of security.

4.3 If it becomes evident after the execution of a contract that NORO's right to be paid the purchase price is jeopardized by want of financial fitness in Purchaser, NORO may refuse to perform and, after allowing time for payment as the case may be, may withdraw from the contract in accordance with the statutory provisions (§ 321 BGB). If a contract is for the production of non-fungible goods (custom-made goods), NORO may declare its withdrawal promptly, without prejudice to the statutory provisions on the allowing of time being dispensable.

4.4 Notwithstanding any instructions of Purchaser to the contrary, NORO has the right to deduct payments from any earlier debts of Purchaser and NORO will inform Purchaser of the nature of the deduction made. If costs and interest have accrued, NORO has the right to deduct the payment from the costs first and then from the interest and finally from the principal claim.

4.5 Purchaser may not set off, withhold or reduce any payments, including if Purchaser has any claims based on complaints or counter-claims, except to the extent the counter-claims have been recognized by final judgment or are indisputable. Purchaser may not withhold payment unless on the basis of counter-claims based on the same contractual relationship.

## 5. Delivery periods

5.1 Any delivery periods and dates, which can be agreed upon on a binding or non-binding basis, require written form. Delivery periods begin on the date of NORO's acknowledgment of order but not before all details of the order have been fully clarified and all obligations of Purchaser have been fulfilled. Except as otherwise agreed from time to

time, delivery periods and dates mean the time the goods are ready for dispatch. They shall be deemed observed by NORO giving notice of the goods being ready for dispatch. Delivery periods and dates shall be deemed observed if the goods cannot be dispatched in time for reasons beyond NORO's control.

5.2 NORO shall not be liable – including if a delivery period or date has been agreed upon on a binding basis – if deliveries of goods or the provision of services is impossible or delayed by force majeure or other events beyond NORO's control that were unforeseeable at the time the contract was made, e.g., shortage of commodities, strikes, lockouts, official orders, fire, theft, natural events, etc., including if such events happen to NORO's suppliers or their sub-suppliers. NORO will give Purchaser prompt notice if any of the foregoing events has occurred and may postpone the delivery of goods or provision of services by the length of the disturbance adding appropriate start-up time or may withdraw from the contract wholly or in part as regards the contractual part that has not yet been performed. If the disturbance continues for more than three (3) months, Purchaser, upon allowing reasonable time, may withdraw from the contract as regards the contractual part that has not yet been performed. If the delivery period is extended or if NORO ceases to be obliged to deliver the goods or provide the services, Purchaser cannot derive any damage claims from the fact.

5.3 In general, default by NORO occurs in accordance with the statutory provisions. In any event, however, occurrence of default is subject to Purchaser giving warning notice. If non-compliance with a binding delivery period or date is in NORO's control and if NORO is in delay, Purchaser is entitled to liquidated compensation for the delay that shall be equal to a half (½) per cent for each full calendar week of the delay but no more than five (5) per cent in the aggregate of the net price (delivery price) of the goods to be delivered and the services to be provided that are affected by the delay. NORO reserves the right to prove that Purchaser has not suffered any damage at all or that the damage is much lower than the above-mentioned liquidated compensation. Purchaser's rights under § 9 of these Standard Terms of Sale remain unaffected.

5.4 NORO may carry out partial deliveries of goods or provide partial services if (i) Purchaser is able to use the partial delivery for the contractually intended purpose and (ii) delivery of the remaining goods ordered has been secured and (iii) this does not generate any substantial extra work or additional costs for Purchaser (unless NORO agrees to bear such costs). Partial deliveries may be invoiced on a separate basis.

5.5 Compliance with NORO's delivery and performance obligations is subject to timely and proper performance of Purchaser's obligations. If Purchaser is in default of acceptance or fails to provide assistance or if delivery is delayed for other reasons in Purchaser's control, NORO may claim compensation for the damage it suffers as a result of such default. The risks of accidental deterioration and accidental loss shall pass to Purchaser when Purchaser is in default of acceptance.

## 6. Dispatch

6.1 Goods are always sold ex works. Goods that NORO has notified to be ready for dispatch must be called off without undue delay but no later than within five (5) days. If goods are not called off within that period, NORO has the right to dispatch the goods at its option. The risk shall pass to Purchaser once the goods have been tendered for dispatch at NORO's works. If dispatch is delayed at Purchaser's request, the risk shall pass to Purchaser when NORO gives notice that the goods are ready for dispatch. No insurance covering losses of any kind will be executed unless upon Purchaser's express request, and any sums advanced by NORO will be charged to Purchaser. In the case of any damage in transit, Purchaser shall promptly arrange for the relevant parties (carrier, forwarding agent, etc.) to ascertain the facts.

6.2 If loading or carriage of the goods is delayed for reasons beyond NORO's control, NORO or its agents have the right but no obligation, at NORO's discretion, to store the goods and to take all measures NORO considers to be appropriate to preserve the goods and to invoice the goods as having been delivered.

## 7. Claims based on defects

7.1 NORO will deliver the goods free from any manufacturing defects of defects in materials. The period for making claims based on defects shall be one (1) year from the delivery of the goods. The foregoing shall apply neither to claims based on defects according to § 438(1) point 2 BGB in relation to buildings and things that have been used for buildings nor to claims under the German Product Liability Act (Produkthaftungsgesetz),



in which events the statutes of limitations shall apply. If Purchaser fails to adhere to NORO's operating or maintenance instructions or modifies the goods or replaces any parts or uses any consumables that are not in conformity with the original specifications, no claims based on defects in the goods can arise if Purchaser cannot disprove the substantiated claim that one of these facts has caused the defect.

**7.2** Any Purchaser claims based on defects shall be subject to proper performance of all Purchaser obligations under §§ 377, 381 German Commercial Code (Handelsgesetzbuch – HGB) in relation to the inspection of the goods and the notification of complaints. Complaints about deviations in quantities delivered or externally visible defects in the goods are to be notified to NORO in writing and without undue delay but no later than within seven (7) days of Purchaser's receipt of the goods. If such a defect is found after that period, Purchaser shall notify NORO in writing promptly upon finding the defect but no later than within seven (7) days of the time the defect is found. Failure to complain in good time shall be construed as Purchaser's acceptance of the consignment.

**7.3** Purchaser's rights in relation to justified complaints are initially limited to the right to claim subsequent performance (remediation of the defect or replacement). Subsequent performance includes neither the deinstallation of the defective goods or parts of the goods nor the renewed installation if NORO was not originally obliged to install the goods. At NORO's option and cost, NORO may demand that (i) Purchaser should send NORO the defective part or equipment to allow repair or replacement or (ii) Purchaser should hold the defective part ready for NORO to carry out the repair or replacement on site.

**7.4** NORO shall bear the expenditures that are required for purposes of examination and subsequent performance, in particular the cost of transport, travel, labour and materials (but not the cost of deinstallation and renewed installation unless NORO had an installation duty) if there is an actual defect. If Purchaser's request for rectification of a defect proves unjustified, NORO may claim recovery of its cost by Purchaser. If Purchaser requests that remediation work should be carried out at a place designated by Purchaser and if such place is not Purchaser's domicile or the contractually agreed destination of the goods, NORO may act upon such request if Purchaser agrees to pay any resulting additional working hours and travel expenses at NORO's standard rates. For all other matters, NORO's right to refuse subsequent performance if the statutory prerequisites are met shall remain unaffected.

**7.5** In urgent cases, for instance if operational safety is in jeopardy or to prevent unreasonable damage, Purchaser has the right to rectify the defect and to recover its objectively required and reasonable expenditures from NORO. Purchaser shall give NORO prompt and, if possible, advance notice of the rectification of the defect by Purchaser. Purchaser has no right to rectify the defect where NORO would be entitled to refuse subsequent performance according to the statutory provisions.

**7.6** If the attempt of subsequent performance fails after allowing reasonable time or if NORO refuses subsequent performance, Purchaser, notwithstanding any damage claims and at Purchaser's option, may reduce the remuneration if the prerequisites of § 4.5 of these Standard Terms of Sale are met or withdraw from the contract. Any liability for ordinary wear and tear shall be precluded. Any claims against NORO based on defects can arise to the original Purchaser only and cannot be assigned.

## 8. Reservation of title

**8.1** NORO reserves title to all goods delivered until it has received all payments from the business with Purchaser. Reservation of title further includes all future and conditional receivables including the acknowledged balance if NORO and Purchaser have made an open account agreement.

**8.2** The goods delivered by NORO and the goods under reservation of title that replace such goods according to the following provisions are hereinafter also collectively referred to as "goods under reservation of title".

**8.3** NORO, at NORO's option, will release the goods under reservation of title as well as receivables or other security instruments insofar as their value consistently exceeds the amount of the hedged receivables by more than 20%. If Purchaser acts in breach of contract, in particular if Purchaser fails to pay the purchase price once accrued, NORO has the right to withdraw from the contract in accordance with the statutory provisions and/or to claim restitution of the goods under reservation of title on grounds of the

reservation of title (hereinafter also referred to as "realization event").

**8.4** Purchaser shall hold the goods under reservation of title in safe custody for, and at no cost to, NORO. Purchaser has the right to process and resell the goods under reservation of title in the course of ordinary business until a realization event occurs. Purchaser may not pledge the goods or transfer them by way of security until the hedged receivables have been paid in full.

**8.5** The Parties hereby agree that if Purchaser processes the goods under reservation of title, such processing will be in the name and for the account of NORO as manufacturer and NORO will directly acquire title to or – if the processing combines materials of multiple owners or if the value of the processed thing exceeds that of the goods under reservation of title – a co-ownership interest (ownership in fractional – undivided – shares) in the newly created thing at the value of the goods under reservation of title relative to the value of the newly created thing. In case NORO does not acquire such title, Purchaser hereby transfers its future title or co-ownership interest – at the above-mentioned ratio – to the newly created thing to NORO by way of security.

**8.6** If the goods under reservation of title are combined into a single thing or irrevocably merged with other things and if one of the other things is considered the main thing, Purchaser, insofar as Purchaser is the owner of the main thing, shall transfer to NORO its co-ownership of the single thing at the ratio set forth in the first sentence above.

**8.7** In case of the resale of the goods under reservation of title, Purchaser hereby transfers the resulting claim against the buyer to NORO by way of security, provided that the claim is prorated if NORO holds a co-ownership interest in the goods under reservation of title. The same shall apply to other receivables that replace or arise in relation to the goods under reservation of title such as insurance claims or tort claims based on loss or destruction. NORO authorizes Purchaser on a revocable basis to collect receivables that are assigned to NORO in Purchaser's name. NORO may not revoke the authorization to collect unless in a realization event.

**8.8** If the goods under reservation of title are attached by third parties, in particular by levy of execution, Purchaser will identify NORO as owner and will promptly notify NORO to allow NORO to enforce its ownership rights. If the third party is unable to pay the costs NORO has incurred in this connection whether in or out of court, Purchaser shall be liable for such costs.

## 9. Liability

**9.1** In conformity with the statutory provisions, NORO's liability shall not be limited in the events of (i) deliberate default or gross negligence, (ii) injury to life, body or health if caused at least through negligence, (iii) mandatory liability under the German Product Liability Act (Produkthaftungsgesetz) or other mandatory provisions of the law, (iv) fraudulent conduct or (v) liability for lack of guaranteed qualities.

**9.2** In the event of injury caused through gross negligence of persons employed by debtor NORO in the performance of its obligations (Erfüllungsgehilfen), NORO's liability shall be limited to the typically foreseeable damage notwithstanding the events stated in § 9.1(ii) to (v).

**9.3** In the event of ordinary negligence, NORO shall not be liable except for negligent (schuldhaft) breach of duties that are of the essence of the contract (wesentliche Vertragspflichten) notwithstanding the events stated in §9.1 (ii) to (v). Duties that are of the essence of the contract are duties the very performance of which enables the proper completion of the contract and on the satisfaction of which a purchaser typically relies and may rely. For purposes of this definition, in particular the duty to deliver the goods or provide the services on time and freedom from defects that significantly affect the functionality or usability of the subject-matter of the contract shall be of the essence. In these events, NORO's liability shall be limited to the foreseeable damage typical of the contract. The foreseeable damage typical of the contract means the damage that NORO when entering into the contract expected or, considering the circumstances NORO was aware of or ought to have been aware of, ought to have expected as potential and direct effect of a material breach of duty. Accordingly, indirect damage and consequential damage resulting from defects in the goods or services shall not be compensable except where such damage is typically to be expected if the goods or services are used according to their intended use.

**9.4** Where NORO provides technical information or consultancy services that do not form

part of the contractually agreed scope of performance, any liability will be precluded for such information or services notwithstanding the events stated in § 9.1 (i) to (v).

**9.5** Where NORO's liability is precluded or limited, such preclusion or limitation shall also apply to employees, staff, legal representatives and persons employed by debtor NORO in the performance of its obligations or any other persons acting on behalf of NORO.

**9.6** If Purchaser has any damage claims or claims for compensation of expenditures as a result of any defects, such claims shall become time-barred on the lapse of the periods of limitation that apply to claims based on defects according to § 7.1 of these Standard Terms of Sale. For all other matters, the statutory periods of limitation shall apply.

## 10. Choice of law, place of jurisdiction, severability, written form

**10.1** The law of the Federal Republic of Germany shall apply to these Standard Terms of Sale and all legal relations between NORO and Purchaser to the exclusion of German private international law and the Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).

**10.2** NORO's registered office shall be the place of performance for deliveries of goods, the provision of services, and payments. If Purchaser is a merchant as defined in the German Commercial Code (Handelsgesetzbuch) or a legal entity under public law or a special fund under public law, Verden (Aller), Germany, shall be the exclusive – including the international – place of jurisdiction for any disputes that arise from the contractual relationship, directly or indirectly.

**10.3** In the event that any provision of these Standard Terms of Sale or other agreements between NORO and Purchaser should be or become void, ineffective or non-enforceable whether wholly or in part, such voidness, ineffectiveness or non-enforceability shall be without prejudice to the effectiveness and enforceability of all of the other remaining provisions. The void, ineffective or non-enforceable provision shall be construed as having been replaced with the effective and enforceable provision that best approximates the whole purpose of the void, ineffective or non-enforceable provision in terms of subject-matter, measurement, time, place and scope. The same shall apply to fill any gaps or omissions.

**10.4** Any agreements or contractually required appropriations and the acceptance of procurement risks or giving of guarantees or making of other representations on or before the execution of a contract shall not be effective unless made in writing. Any subsequent individual agreements made with Purchaser from time to time (including any subsidiary agreements and amendments) shall override these Standard Terms of Sale in any event. A written contract or NORO's written acknowledgment of order is decisive to define the substance of any such agreements. The effectiveness of any legally relevant notifications and declarations to be made by Purchaser to NORO after the execution of a contract (e.g., to allow time or notify defects or withdraw from the contract) shall be subject to written form.

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