

neonsee GmbH: General Terms and Conditions for Commercial Transactions

§ 1 Scope

The conditions of sale are exclusively applicable to concerns, legal persons governed by public law or special assets governed by public law as delineated in § 310 Paragraph 1 of the German Civil Code. All trade receivables pertinent to neonsee GmbH shall be executed exclusively in accordance with the following Terms and Conditions. General terms and conditions stipulated by the Customer shall be recognized by neonsee GmbH solely if their validity is expressly acknowledged in writing.

§ 2 Documents submitted

neonsee GmbH reserves proprietary rights and copyrights to all documents provided to the Customer in the course of order execution (calculations, estimates, drawings, etc.). Such documents may not be made available to third parties unless express written approval thereof is provided by neonsee GmbH.

§ 3 Prices and terms of payment

(1) Unless otherwise agreed in writing, prices stipulated by neonsee GmbH shall be ex-works and shall exclude packaging charges and value-added tax, to be calculated at the prevailing rate. Packaging costs shall be invoiced separately.

(2) Payments are to be made solely to the account detailed below if the contractual obligation is to be deemed fulfilled.

(3) In the event that neonsee GmbH assumes responsibility for installation or assembly, the Customer is to bear all ancillary costs (travel costs, etc.) thereby incurred and is to remit these over and above the contracted fee, unless otherwise covenanted.

(4) Unless otherwise agreed, the invoiced amount is to be paid within 15 days of invoicing. Default interest shall be charged at a rate of 8 percent over and above the prevailing base interest rate. The right to assert a higher claim for compensation owing to default is reserved.

(5) In the event that no fixed price is agreed, the right to carry out appropriate price amendments owing to changes in the cost of wages, materials, and distribution is reserved pertinent to deliveries effected 4 months or more after conclusion of the Agreement.

§ 4 Offset

The Customer shall have offset rights solely if the Customer's claim thereto is legally ascertained or is undisputed.

§ 5 Retention of title

(1) The retention of title hereinafter covenanted serves to safeguard all existing and future claims of neonsee GmbH vis-à-vis the Customer in the context of the supply relationship prevailing between the contractual partners.

(2) All goods delivered to the Customer by neonsee GmbH shall remain proprietary to neonsee GmbH until complete payment of all secured receivables has been effected. The goods in question, as well as the goods that take their place and are deemed subject to proprietary rights in accordance with this Clause, shall hereinafter be termed reserved-title goods.

(3) The Customer shall be entitled to process and sell reserved-title goods within the parameters of routine business transactions until such time as the collateral is realized (Paragraph 8). Pledging and transfer by way of security are impermissible.

(4) In the event that reserved-title goods are processed by the Customer, it is covenanted that such processing shall be effected on behalf of and favoring neonsee GmbH in its capacity as manufacturer. Furthermore, neonsee GmbH is entitled to direct title acquisition or – should the processing of such goods involve materials supplied by multiple manufacturers or should the value of the processed commodity be greater than that of the reserved-title goods – to co-acquisition (co-ownership) of the newly created commodity, taking into account the value of the reserved-title goods in relation to that of the newly-created commodity. In the event that such title acquisition is not effected to the benefit of neonsee GmbH, the Customer shall undertake to transfer to neonsee GmbH with immediate effect any title to the goods or – within the parameters of the relationship specified above – co-ownership of the newly-created commodity as security. In the event that reserved-title goods combine with other articles to constitute a distinct article or are inextricably combined therewith, and should one of the other articles be deemed the principal article, neonsee GmbH shall transfer proportional co-ownership of the distinct article to the Customer in accordance with the relationship delineated in Clause 1.

(5) In the event of re-sale of reserved-title goods, the Customer shall with immediate effect undertake to assign to neonsee GmbH as security the resultant claim vis-à-vis the buyer – and in the case of co-ownership reposed in neonsee GmbH a share of the reserved-title goods proportionate to co-ownership. The same applies in the case of other claims that take the place of reserved-title goods or otherwise arise in the context thereof, such as insurance claims or claims arising on the basis of action ex delicto associated with loss or destruction. neonsee GmbH revocably authorizes the Customer to collect the claims assigned to neonsee GmbH in its own name. neonsee GmbH may revoke this direct debit mandate only in the event that the collateral is realized.

(6) Should third parties lay claim to reserved-title goods, specifically by attaching them, the Customer shall immediately bring to the attention of such third parties the proprietary rights and title retained by neonsee GmbH and shall notify neonsee GmbH thereof in order to ensure assertion of the latter's proprietary rights. Should the third party not be in a position to pay legal or extralegal costs arising therefrom, the Customer transacting with neonsee GmbH shall be liable to bear all such costs.

(7) Upon request, neonsee GmbH shall release at its discretion the reserved-title goods and the commodities that take their place or any claims assigned, insofar as their value exceeds by more than 10% the amount constituted by secured claims.

(8) Should neonsee GmbH withdraw from the Agreement in consequence of the Customer's violation of its terms – in particular delayed payment – (collateral realization), neonsee GmbH shall be entitled to reclaim the reserved-title goods.

§ 6 Delivery timelines

(1) Adherence to the delivery timelines stipulated by neonsee GmbH presupposes timely and proper fulfillment of the Customer's obligations (for instance, submission of all receivable documents, approvals and clearances, compliance with terms of payment, etc.). In the event that these prerequisites are not fulfilled in a timely manner, timelines will be extended accordingly, provided that neonsee GmbH is not responsible for such delays. The right to plead non-fulfillment of contract is reserved.

(2) If the Customer is in default of acceptance or in violation of other collaborative obligations, neonsee GmbH shall be entitled to demand compensation for resultant damages, inclusive of any additional costs incurred. The right to assert further claims shall be reserved. The risk of accidental loss or accidental deterioration of purchased goods shall be transferred to the Customer in the event of default of acceptance or of debtor's delay.

§ 7 Transfer of risk

(1) Once the purchased goods are dispatched to the Customer upon the latter's request, the risk of accidental loss or accidental deterioration is transferred to the Customer as soon as neonsee GmbH hands over the goods to the agent, carrier, or the person or institution commissioned to deliver the consignment.

(2) If requested by the Customer, insurance cover against the customary transportation risks shall be arranged by neonsee GmbH at the Customer's own expense.

§ 8 Acceptance

The Customer shall not be entitled to decline acceptance of consignments dispatched by neonsee GmbH on account of insignificant defects. Rights pertaining to the rectification of any defects remain unaffected thereby.

§ 9 Liability for material defects; limitation

(1) The Customer's warranty rights are subject to the Customer's due compliance with inspection and notification stipulations in accordance with § 377 of the German Commercial Code.

(2) In the event of a justifiable claim, the defect in question shall be rectified or non-defective replacement goods provided by neonsee GmbH at the latter's discretion and cost, or the rejected goods shall be redelivered evincing no defects (supplementary performance). In the event that supplementary performance fails within an appropriate period that is to be stipulated in writing by the Customer or in the event that neonsee GmbH declines supplementary performance, or should the type of supplementary performance chosen by neonsee GmbH be deemed unacceptable by the Customer, the latter shall be entitled to reduce the remuneration at its discretion (reduction) or to demand cancellation of the Agreement (withdrawal). Supplementary performance shall be deemed to have failed if no attempt is made to provide rectification within the defined and appropriate timeline or if the second attempt at evincing supplementary performance, which is to be effected within a further appropriate timeline likewise to be defined by the Customer, proves unsuccessful.

(3) The claims for defects detailed in § 9 Paragraph 2 come under the statute of limitations within 12 months of the provision of services or delivery of goods to the Customer by neonsee GmbH. This timeline shall not be applicable in the event that longer expiration periods are stipulated by law, especially in the event that neonsee GmbH is deemed to have violated an obligation through deliberate or gross negligence, owing to fraudulent concealment of a defect or failure to comply with a guarantee of quality. Statutory regulations pertaining to the recommencement, suspension and suspension of expiration of limitation periods remain unaffected.

(4) The Customer's claims for damages in consequence of a material defect are inadmissible unless mandatory statutory liability is involved, particularly arising from fraudulent concealment of a defect, failure to comply with a guarantee of quality, injury to life, limb, body, or health, or if neonsee GmbH, its legal representatives, or agents are deemed to have violated an obligation through deliberate or gross negligence. The foregoing provision does not imply a change in the burden of proof.

§ 10 Claims for damages

(1) Any other claims for damages and expenses raised by the Customer – irrespective of their legal basis – are inadmissible, particularly those alleging impossibility of performance, violation of obligations arising from the contractual relationship and tort. This does not apply insofar as mandatory liability is involved, particularly that arising from intent and gross negligence, from injury to life, limb, body, or health, from the violation of fundamental contractual obligations, or from liability in accordance with product liability law. „Fundamental contractual obligations“ in the aforementioned sense are those obligations that may be fulfilled solely by means of due implementation of the Agreement and attainment of the Agreement's objective, and in which the Customer may repose every confidence consistent with the spirit and purpose of the Agreement. Claims for damages arising from the violation of fundamental contractual obligations are limited to contract-typical, foreseeable damages, provided intent or gross negligence or injury to life, limb, body, or health are not evinced. The foregoing provision does not imply a change in the burden of proof to the detriment of the Customer.

(2) Insofar as the Customer is entitled to claim damages, this entitlement shall come under the statute of limitations upon cessation of the limitation period detailed in § 9 Paragraph 3. Claims for damages associated with product liability law are subject to statutory limitation provisions.

§ 11 Installation; assembly

(1) In the event that neonsee GmbH carries out installation or assembly at the Customer's site, the Customer is to ensure that the requisite preconditions for these procedures are established in a timely manner and at the Customer's cost – in particular that the appliances and work equipment required for assembly and commissioning are available, that suitable space is provided for materials storage, and that adequate power supply and water supply are available.

(2) Should installation or commissioning be delayed owing to circumstances for which neonsee GmbH shall not be held responsible, the Customer shall bear reasonable and proportionate costs incurred owing to idle times and any additional travel that must be undertaken.

§ 12 Acceptance

Insofar as neonsee GmbH requests acceptance of the consignment upon its completion, the Customer is obligated to effect this within three weeks. Acceptance cannot be withheld because of insignificant defects. Should the Customer fail to acquiesce to the request to accept delivery within three weeks, acceptance shall be deemed effected. Should a test phase have been covenanted, acceptance is deemed to have been effected only upon commencement of use or continued operation subsequent to cessation of this test phase.

§ 13 Confidentiality obligation

The Customer is obligated to treat all commercial and technical information pertaining to neonsee GmbH and its trade receivables in the strictest confidence, and in particular to safeguard any such information from competitors, even upon cessation of the contractual relationship. The Customer shall ensure that its employees, contracted personnel and other agents also comply with this confidentiality obligation. The confidentiality obligation does not extend to information already in the cognizance of the Customer at the time of cession, data already published, information published subsequent to cession to the Customer and for which the Customer is not answerable, or information that is made available to the Customer by a third party in a lawful manner. The confidentiality obligation is also inapplicable to information that must mandatorily be made available to public authorities.

§ 14 Place of fulfillment; place of jurisdiction; applicable law; German version

(1) The place of fulfillment and place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the domicile of neonsee GmbH.

(2) This Agreement and all legal relations subsisting between the parties are subject to the law prevailing in the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) In the event that clarifications are required and/or contradictions are evinced between the German and English versions of the General Terms and Conditions, the German version is to be deemed definitive.

§ 15 Severability clause

In the event that single provisions of the Agreement are deemed legally ineffective, the validity and enforceability of all remaining provisions within the Agreement shall remain unaffected. This does not apply if adherence to the Agreement would constitute unreasonable hardship for either of the parties.