

Conditions of Purchase NOVAPAX – Status 05/2012

§ 1 Applicable conditions

- (1) Orders placed by NOVAPAX will be exclusively on the basis of the NOVAPAX Conditions of Purchase. The supplier's general terms and conditions of delivery or other different agreements will only apply if they are confirmed in writing by NOVAPAX as an addition to the NOVAPAX Conditions of Purchase.
- (2) The NOVAPAX Conditions of Purchase will also apply if we are aware of conditions of the supplier that conflict with or are different to the NOVAPAX Conditions of Purchase yet accept a delivery without raising any objection. In the conditions set out here, we expressly oppose any reference or counter-acknowledgement by the supplier asserting his terms and conditions of delivery.
- (3) The NOVAPAX Conditions of Purchase will also apply to all future transactions with the supplier.

§ 2 Orders

- (1) Only formal orders placed in writing will be valid. The written form will include EDI, WebEDI, e-mail and fax.
- (2) The acceptance of every order will be acknowledged without delay by the supplier upon receipt but within two weeks at the latest. If NOVAPAX has not received the acknowledgement within two weeks of the date of the order, NOVAPAX will be entitled to cancel the order. Should NOVAPAX not cancel in such cases, the order will be effected at the time the delivery items are delivered to NOVAPAX .
- (3) Within the limits of what is reasonable for the supplier, NOVAPAX may request changes to the item to be supplied in respect to its construction and design. In this context, adequate provision must be made to take account of the implications, in particular in respect to additional and reduced costs and delivery dates.

§ 3 Prices

- (1) Unless otherwise agreed, the prices indicated in NOVAPAX 's order and confirmed by the supplier will be binding.
- (2) If no special agreement has been reached, the prices for the delivery will be pursuant to Incoterms 2000 FCA, DDU.

§ 4 Invoices and supplier declarations

- (1) The invoice will be sent to NOVAPAX postal address and may not be enclosed with the delivery. It must contain all the data specified by NOVAPAX and one copy of this invoice will be submitted to NOVAPAX without delay but at the latest within 5 days of delivery. Receipt of the invoice will not render accounts receivable due for payment.
- (2) The supplier is obligated, at the latest with the initial delivery, to submit a supplier's declaration pursuant to EC Regulation 1207/2001 or a declaration pertaining to non-preferential origin pursuant to EC Regulation 2913/92 Art. 22-26 as well as, on request, carry out a test pursuant to German, European, as well as American export law (specifying the German/European export list number [EL] or the American ECCN).
- (3) Until the formal requirements pursuant to items (1) and (2) have been met, the invoices will be deemed as unissued.

§ 5 Conditions of payment

- (1) If no varying agreements have been made, net payment will be made within 60 days by NOVAPAX .
- (2) Default of payment will only occur 30 days after the due date and receipt of the invoice. The invoice will be due 30 days after further processing of the delivery items, but at the latest 60 days after the invoice has been received; at the earliest, however, following compliance with the written form requirements specified in para. 4, items (1) and (2) and receipt of the delivery.
- (3) Payment will be made under reserve of invoice verification.
- (4) In the case of the acceptance of early deliveries, the deadlines for determining the due dates will only commence following the agreed delivery date.
- (5) Interest on arrears for payment claims will be limited to a maximum of 5 percentage points above the base lending rate. If the supplier pays lower interest on credit, such rates will be deemed authoritative. In the event that compensation claims are lodged for delayed performance, the supplier is to provide NOVAPAX with proof of the interest on credits that the supplier pays.
- (6) A renewed and/or extended reservation of title is excluded.

§ 6 Delivery dates and periods

(1) The dates, quantities and periods listed in the order and/or delivery schedule are binding and must be satisfied/complied with in full. NOVAPAX is not under obligation to accept partial performance. In the event that the supplier brings about partial performance, NOVAPAX may, following a reasonable period to perform services in full, which has been proven unsuccessful, reject the partial deliveries as not due. Receipt of the goods at the agreed NOVAPAX unloading point, or insofar as no unloading point has been agreed on, at NOVAPAX 's registered office, will be deemed authoritative as regards complying with the delivery dates.

(2) In the case of delivery call-ups, the supplier is to make the delivery available as follows:

- The demand, which will be described as immediate demand, is to be delivered by the supplier without delay to the plant specified in the call-up following receipt;
 - Future demand is to be kept available by the supplier for the dates stated in the call-up. Delivery is to be carried out at the time at which we call up such delivery quantities/parts of such delivery quantities as immediate demand;
 - Insofar as notice has been given for a demand which has not, however, been called up as immediate demand, such a backlog is only to be delivered at the time at which the backlog is called up as immediate demand.
- This will not affect varying agreements/allocation of deliveries.

§ 7 Dispatch/place of performance/passing of risk

- (1) In each case, the delivery will be made to the address specified on the order. The goods are to be accompanied by a delivery note in duplicate.
- (2) Unless NOVAPAX has undertaken dispatch itself and/or specified the freight forwarding company, the place of performance will always be the address stipulated on the order and, if no address is specified, the NOVAPAX registered office.
- (3) Unless it has been agreed otherwise, NOVAPAX will take out transport insurance. This will not affect the risk borne by the supplier.
- (4) The passing of risk will take place according to Incoterms 2000, as specified in para. 3, item 2.

§ 8 Delay in delivery

(1) The supplier will bear the supply risk for the delivery items ordered by NOVAPAX .

(2) The date stated in written orders by NOVAPAX or in other declarations by NOVAPAX in conjunction with the order will be authoritative as regards the delivery date determined according to the calendar. Date specifications on the part of the supplier are irrelevant regarding the time of the service rendered by the supplier, unless such dates correspond with those stated by NOVAPAX .

(3) As soon as the supplier foresees difficulties in the procurement of materials, manufacture, etc., which could prevent him from supplying the contractual goods within the stipulated period, he will inform NOVAPAX of this immediately. This will not affect the supplier's obligation to supply the goods on schedule or to assume the supply risk.

(4) The acceptance of a delayed delivery or performance does not in any way constitute a relinquishment of claims against the supplier to which NOVAPAX is entitled due to the delayed delivery and, in particular, does not constitute a relinquishment of any claims to contractual fines. NOVAPAX may reject partial performance at any time as non-performance of the supplier's delivery obligation.

(5) If the supplier is under obligation to supply NOVAPAX with delivery items on several occasions, and if the supplier exceeds the agreed delivery dates for two deliveries/partial deliveries, NOVAPAX will then be entitled to cancel any existing outline agreement between the parties pertaining to the delivery due to serious reasons. In this respect, the objection raised by NOVAPAX regarding initial non-compliance with the time limit will be deemed a warning that has been unsuccessful on the grounds of additional non-compliance with time limits. This does not affect NOVAPAX 's right to assert all claims to which NOVAPAX is entitled as regards non-compliance with the time limit of the respective supply of single items. If no outline agreement is in place between NOVAPAX and the supplier in the above-mentioned cases, NOVAPAX will, in the case of non-compliance with time limits on two occasions, be entitled to withdraw from the deliveries/parts of deliveries that remain outstanding. This will also apply if the supplier was not responsible for the delay. This does not affect further-reaching rights on the part of NOVAPAX , even in the event that a withdrawal is declared.

(6) If the supplier is delayed in his deliveries and services through his own fault, he will be obligated to compensate NOVAPAX for resulting damages. Insofar as no other damages can be proven, the supplier will be obligated to pay NOVAPAX 1% of the backlogged delivery value per week or part thereof, up to a maximum of 10% of the backlogged delivery value.

§ 9 Force majeure

(1) Incidents, force majeure, strikes and lock-outs at NOVAPAX or at NOVAPAX 's suppliers, which result in production being stopped or restricted at NOVAPAX and which could not be avoided, in spite of taking reasonable care under the circumstances, entitle NOVAPAX to postpone acceptance and payment for the duration of the impediment and a reasonable start-up period.

(2) Should acceptance be deferred in the above-mentioned cases and the time fixed for payment extended, any possible claims for compensation on the part of the supplier will not apply. However, NOVAPAX may only claim relief by reason of such circumstances if NOVAPAX has informed the supplier of these events within a period appropriate for the circumstances.

(3) If these impediments last for less than two months, the supplier is not entitled to withdraw from the contract, as long as NOVAPAX accepts the delivery items following the expiration of the 2-month deadline. If these impediments last longer than two months and after a reasonable additional period has been granted, the supplier will be entitled to withdraw from the contract in respect of the part that has not yet been completed and not paid for by NOVAPAX .

§ 10 Quality and documentation

(1) The goods or services delivered by the supplier will comply with the generally accepted rules of technology, safety regulations and the agreed technical data. Changes to the delivery item or a released production process will be subject to prior, written approval by NOVAPAX .

(2) Initial sampling will ensue according to NOVAPAX work instructions VA 4.2 and/or the concluded quality assurance agreement. The necessary documents are to be submitted in German or English. No other language is permitted. If NOVAPAX requests initial samples, series production may not commence until written confirmation has been given that the samples have been passed as good. Irrespective of this, the supplier will constantly inspect the quality of the goods supplied and design his quality assurance system so that it always incorporates state-of-the-art technology, in particular in respect to DIN ISO 9000:2000, TS 16949 or QS 9000 and VDA 6.1.

(3) If the type and scope of testing, as well as test equipment and methods, have not been firmly agreed on between the supplier and NOVAPAX , the supplier will make an appropriate suggestion. At the supplier's request, NOVAPAX will be prepared, within the scope of its knowledge, experience and possibilities, to discuss testing with the supplier and determine the level of required test technology. If the parties do not reach an agreement on this, the test equipment and methods will be bindingly determined for both parties by NOVAPAX at its reasonable discretion.

(4) If the supplier has received from NOVAPAX drawings, samples or other specifications, he will undertake to comply with these with reference to the type, quality and design of the delivery item. The supplier may not refer to documents, advertising statements or drawings that contain statements on the quality of the delivery item, unless the requirements reflected therein comply with NOVAPAX requirements in the above documents. In other respects, the supplier is, however, bound by such statements insofar as these exceed the NOVAPAX quality requirements.

In the case of components marked in the technical documentation or where it has been specifically agreed, e.g. marked with "◇", the supplier will also keep special records indicating when, in which way and by whom these delivery items have been tested with regard to the characteristics subject to mandatory documentation and what the result of the required quality tests were. The test documentation is to be kept for 30 years and, if required, submitted to NOVAPAX . If the supplier discontinues business operations prior to the expiration of the 30-year period, he will surrender the documents at that time to NOVAPAX free of charge.

The supplier will place his sub-contractors under the same obligation within the scope of the available legal means.

(5) Should the authorities or NOVAPAX 's customers require NOVAPAX to allow them to inspect production procedures or production documentation for specific requirements, the supplier declares that he is willing to grant them the same rights in his company and to give any reasonable assistance required in this context. In addition, the supplier will also ensure that these rights will be granted to the authorities, NOVAPAX , or customers of NOVAPAX in respect to his sub-contractors.

(6) In the case of materials, which, for reasons of legislation, regulations, and other provisions, or their composition or effect on the environment, require special treatment in respect to packaging, transport, storage, handling and/or waste disposal, the supplier will submit a safety data sheet with the quotation to NOVAPAX , completed in full, as well as any data sheet that may be required for further distribution abroad and a relevant accident data sheet (transport). If changes in the materials or legal position occur, the supplier will submit revised data sheets to NOVAPAX .

§ 11 Notice of defects

(1) Insofar as NOVAPAX is obligated to provide notice of defects in quality, this will ensue at the latest 14 days following receipt of the goods in the case of obvious defects.

- (2) In the case of goods where the defect can only be detected during processing by NOVAPAX and/or installation on the part of NOVAPAX 's customers, the notice of defects will be deemed to have been given in good time if it is made within one week after the defect has been detected at NOVAPAX or following receipt of the notice of defects in quality issued by NOVAPAX 's customer.
- (3) In the event that a claim is asserted by NOVAPAX 's customer as a result of a defect - irrespective of non-compliance with the regulation pertaining to proper notice of defects - the notice of defects from NOVAPAX will be considered to have been made in good time if the notice of defects on the part of NOVAPAX is made 7 days after notice is given of the defect by NOVAPAX 's customer.
- (4) If a claim can be asserted against NOVAPAX as a result of a defect that is attributable to the fact that the supplier and/or his agents made inaccurate statements to the NOVAPAX customer regarding the quality of the delivery item, the notice of defect will be considered to have been made in good time if NOVAPAX notifies the supplier of this defect 14 days after receiving the notice of defect from the NOVAPAX customer.
- (5) If the facts provided for in accordance with items (1) to (4) constitute a restriction of the rights of the supplier pursuant to § 377 of the German Commercial Code (HGB), the supplier will waive his objection to a delayed notice of defects.
- (6) Any payments of the purchase price that may have been made before the defect was detected will not constitute recognition that the goods are free from defects and were delivered according to regulations.

§ 12 Material defects

- (1) In the case of a defective delivery, the statutory provisions valid at the time of the delivery by the supplier will apply, unless there are agreements deviating from these Conditions of Purchase.
- (2) Unless otherwise stated below, the statute of limitations for claims for material defects, which do not apply to a structure, and which are not objects normally used in a structure, will be 36 months from the time when the delivery item is accepted by the NOVAPAX customer, at the latest, however, 40 months from the delivery of the items to NOVAPAX . If the delivery parts in question are parts that are installed in motor vehicles or motorcycles, the statute of limitations will commence at the time when the vehicle is initially registered, however, it will also end a maximum of 40 months after the delivery item has been delivered to NOVAPAX . For spare parts, the statute of limitations will commence at the time the parts are installed in the respective item.
- (3) A widespread defect is present if at least 10% of the same type of delivery items have a comparable defect.
- (4) The suspension of the statute of limitations is based on the statutory provisions subject to the proviso that the suspension of the statute of limitations commences at the time of receipt of the notice of defects at the supplier's premises. In the case of several attempts to remedy the defect, the statute of limitations will be suspended for at least 3 additional months, calculated from the last attempt to remedy the defect.

§ 13 Producer's liability

- (1) Unless otherwise stipulated, the materials and parts to be delivered to NOVAPAX are intended for installation in motor vehicles and motorcycles, or special vehicles, ship aggregates, aircraft, and railway vehicles. These products are used throughout the world.
- (2) The supplier must carry out all inspections of the products manufactured and/or supplied by him, irrespective of any incoming goods inspections that may be undertaken by NOVAPAX . The supplier will be responsible for the perfect quality of the delivery item. Inspections carried out by NOVAPAX will not release the supplier from this obligation.
- (3) The statutory provisions will be deemed applicable as regards claims lodged by NOVAPAX against the supplier pertaining to producer's liability. Insofar as the statutory provisions include no regulation for circumstances by which a claim can nevertheless be asserted against NOVAPAX due to product liability or a breach of safety regulations imposed by the authorities in Germany or other countries, the supplier will reimburse NOVAPAX for any losses incurred as a result of this, including the costs for legal action, providing the supplier is the manufacturer of the defective delivery part that caused the defect, and/or exempt NOVAPAX from claims for damages. This liability of the supplier will also exist even in the case of non-culpability/non-responsibility of the supplier, if a claim is made against NOVAPAX under German or foreign law on the grounds of liability without fault due to this defective part of the delivery. The same rules governing the burden of proof will apply to the relationship between NOVAPAX and the supplier as between the claimant and NOVAPAX . Should several parties be liable for damages covering the same loss, § 5 of the Law of Product Liability will apply in this case. If NOVAPAX is also liable, § 6 of this law will apply.
- If NOVAPAX or the NOVAPAX customer is obligated to carry out a recall campaign on account of a defect caused by the goods delivered by the supplier or if the performance of such a recall campaign constitutes a reasonable action and/or if NOVAPAX is obligated to assume the costs of such a recall, the supplier will be obligated to cover the costs. If the costs are to be apportioned among several responsible parties, the provisions set out in §§ 5 and 6 of the Law on Product Liability will apply accordingly.
- (4) The supplier will take out appropriate third party liability insurance, in particular take out product liability insurance with adequate coverage that also includes recall costs. At NOVAPAX 's request, the supplier is to immediately furnish proof of the conclusion of such insurance.

§ 14 Property rights

- (1) The supplier will be liable for claims that arise as a result of the infringement of property rights and applications for property rights when the delivery items are used as specified in the contract, insofar as at least one of these series of property rights has been published either in the home country of the supplier or by the European Patent Office in one of the EU states, Japan, the USA, Brazil, Switzerland, or South Africa.
- (2) The statute of limitations as a result of the liability for violation of property rights will commence as soon as the claim arises and NOVAPAX has been made aware of the underlying circumstances to the claim or NOVAPAX should gain such knowledge without gross negligence. At most, it will amount to 10 years from the delivery of the item.

§ 15 Supply of spare parts

- (1) The supplier undertakes to ensure that spare parts will be provided for the proposed service life of the NOVAPAX end products in which the supplier's delivery items are installed. The service life for these products is 30 years (20 years for motorcycles).

§ 16 Manufacturing equipment

- (1) Materials or parts supplied by NOVAPAX will remain NOVAPAX 's property and must be marked "NOVAPAX Reichenbach". Such items may only be used for the intended purpose. Materials will be processed and components assembled for NOVAPAX . It is agreed that NOVAPAX will have joint ownership of the items produced using materials and components supplied by NOVAPAX , the value being in proportion to the value of the items supplied in relation to the overall value. Transfer will be replaced by an agreement that the goods will remain in the supplier's possession until the agreed delivery date for processing and will be kept separately for NOVAPAX .
- (2) Documentation of whatever kind, which NOVAPAX has provided to the supplier, such as samples, drawings, masters and similar will be returned free of charge to NOVAPAX upon request.
- (3) The supplier will be obligated to sufficiently insure the provided materials and parts against all risks, in particular fire and theft, at his own expense and, on request, furnish proof that such insurance has been taken out.
- (4) Molds, masters and equipment, etc. may only be destroyed if written permission has been obtained from NOVAPAX . The supplier will submit at regular intervals and whenever requested to do so a list of manufacturing equipment owned or jointly owned by NOVAPAX .

(5) If requested to do so by NOVAPAX, the supplier will immediately hand over, within one day at the latest, materials, components, molds, masters, equipment or other manufacturing equipment provided by NOVAPAX. If the manufacturer is the joint owner, the goods will be handed over gradually against payment of the manufacturer's share of the goods. In the event of a dispute concerning the amount of the joint ownership share, NOVAPAX can avoid the right of retention being exercised due to this joint ownership by issuing a guarantee for the amount in dispute. In other respects, the right of the supplier to retain manufacturing equipment is excluded, provided the account receivable on which the right of retention is based is disputed or has not been legally determined.

(6) Where the security rights to which NOVAPAX is entitled in accordance with item (1) exceed the purchase price of all the reserved goods for NOVAPAX that have not yet been paid for by more than 10%, NOVAPAX will undertake to release the security rights at the request of the supplier, at NOVAPAX's discretion.

§ 17 Business secrets

(1) The supplier undertakes to treat NOVAPAX's order and all commercial and technical details associated with this as business secrets. This obligation will also apply after the end of the delivery contract, until this business secret has become public without any involvement on the part of the supplier.

(2) Products that have been manufactured on the basis of documentation produced by NOVAPAX such as drawings, masters and similar, using confidential information provided by NOVAPAX, or using NOVAPAX's tools or tools copied from NOVAPAX may not be used by the supplier himself or be offered or supplied to third parties.

(3) Parts that have been developed or further developed by NOVAPAX in conjunction with the supplier may only be supplied to third parties with NOVAPAX's written authorization.

(4) Where the supplier has involved sub-contractors in the performance of his delivery obligation to NOVAPAX, he will ensure that they are also placed under obligation to maintain confidentiality as listed under § 17 items (1) and (2). When requested to do so by NOVAPAX, the supplier will provide NOVAPAX with proof of an appropriate written agreement with his sub-contractor.

§ 18 Special processing

Delivery schedules will only apply in conjunction with a corresponding price agreement.

The following regulations will only apply to the processing of orders which result from delivery schedules. Unless otherwise noted below, these Conditions of Purchase will also apply.

(1) Backlogs for which notice has been given are to be delivered without delay as immediate demand and apply to previous delivery allocations. Insofar as differences apply regarding the amount of such backlogs, the backlog for which NOVAPAX has given notice will be deemed authoritative.

(2) If any other shipments are en route to NOVAPAX other than the listed last deliveries, these quantities will be added to the next due delivery installment.

(3) Unrequested advance deliveries will be returned and freight charged to the supplier.

(4) NOVAPAX will provide production release data for the first calendar month of the order releases. Once the first month has passed, the second month will automatically be assigned fixed call-off criteria, etc. Primary materials may be made available for a further month. The figures provided for planning purposes are unbinding. NOVAPAX is entitled to modify the scope of the order in accordance with its requirements.

(5) If NOVAPAX has not received a communication refusing the order within three working days, the order will be considered to have been accepted.

§ 19 Cessation of payment, insolvency

If you discontinue your payments, or if a provisional insolvency administrator is appointed, if insolvency proceedings are opened against your assets, or if bills of exchange or checks issued by you have not been honored, then we have the right to withdraw from the contract or, effective immediately, terminate the contract fully or partially, without it being possible for any claims against us to be derived from that. If we terminate a contract, the performances rendered up to that point will be invoiced at the contractual prices only to the extent that we can make use of them according to the terms of the contract. Any damage arising to us will be taken into account during invoicing.

§ 20 Final provisions

(1) The law of the Federal Republic of Germany will apply to these Conditions of Purchase and the entire legal relationship between NOVAPAX and the supplier. Application of the agreement of the United Nations Convention on Contracts for the Sale of Goods (CSG) is excluded.

(2) The exclusive place of jurisdiction for all disputes arising directly or indirectly from this agreement will be Stuttgart and, if selected by NOVAPAX, also the place of jurisdiction of the supplier.

(3) If one party to this contract suspends payments, insolvency proceedings are instituted against the assets of the contracting party, or in-court or out-of-court settlement proceedings have been initiated, the other party will be entitled to withdraw from the part of the contract that has not been fulfilled. This will not affect further-reaching claims.

(4) Should any provision of these Conditions of Purchase or any provision within the scope of other agreements be or become invalid, the validity of all other provisions or agreements will not be affected. If the invalid agreement in question does not amount to the General Terms and Conditions of Business, the parties will be obligated to replace the invalid agreement with a valid agreement which comes closest to the economic purpose of the invalid agreement in a manner that is deemed legally valid.

(5) These Conditions of Purchase are valid also for NOVAPAX connected companies.