

# International Terms and Conditions of Sale Ninkaplast GmbH

( dated October 2021)

## § 1 Applicability of these International Terms and Conditions of Sale

(1) The terms and conditions set out in these International Terms and Conditions of Sale, which form an integral part of the Contract of Sale, shall apply if (i) the Buyer has his relevant place of business not in Germany, and (ii) if the prevailing object of the contract is the supply of goods.

(2) These Terms and Conditions of Sale do not apply if the goods are bought for the Buyer's personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract of Sale that the goods were bought for any such use. The Buyer declares that the goods are not bought for such personal, family or household use.

(3) These Terms and Conditions of Sale apply exclusively to the Contract of Sale. We are not bound by the Buyer's terms of business irrespective of whether they conflict with our Terms and Conditions of Sale or whether they deviate from statutory provisions.

## § 2 Formation of the Contract of Sale

(1) A Contract of Sale always requires a written order of the Buyer.

(2) We may accept the Buyer's written order with our order acknowledgement (hereinafter the "Order Acknowledgement") within 10 (ten) calendar days after receipt of the Buyer's order.

## § 3 Applicable Law

(1) The Contract of Sale is governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.

(2) Should commercial terms be used the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

## § 4 Specifications of the goods; Third party rights

(1) The goods to be delivered have to conform to the specifications and quality requirements set out in the Order Acknowledgement. To the extent no specifications or quality requirements are stated in the Order Acknowledgement, the goods conform with the contract if they are fit for the purpose which is usual in Germany and fit for the purpose for which goods of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.

(2) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

## § 5 Obligation to deliver; Passing of risk

(1) We have to deliver the goods referred to in the Order Acknowledgement including a packaging that is suitable for the means of transportation.

(2) Delivery has to be made FCA Incoterms 2020 at the place of delivery indicated in the Order Acknowledgement. If no place of delivery is indicated in the Order Acknowledgement, delivery has to be made FCA Incoterms 2020 at our premises in 32108 Bad Salzuflen/Germany. We are not obliged to contract for carriage and we are not obliged to inform the Buyer that the goods have been delivered or that the carrier or another person nominated by the Buyer has failed to take the goods within the time agreed.

(3) Adherence to the delivery date respectively the delivery period stated in the Order Acknowledgement is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.

(4) All delivery dates and delivery periods are dependent upon the Buyer performing all of his obligations in due time. In particular, the Buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.

(5) If a sample is delivered and according to the Contract of Sale the goods shall conform to the sample previously delivered, any delivery dates are dependent upon the Buyer approving the sample in writing.

(6) We are entitled to make partial deliveries and to invoice these separately.

(7) The passing of risk takes place with delivery in accordance with § 5 (2). Should the Buyer fail to take delivery, the risk passes at the time the Buyer fails to take delivery.

(8) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the Buyer will not perform his obligations under the Contract of Sale, in particular not be able to pay the agreed price in due time.

## § 6 Delivery Note, Invoice and other documents

(1) We will provide the Buyer with a delivery note issued according to our standard.

(2) We will provide the Buyer only with such documents explicitly stated on the Order Acknowledgement.

## § 7 Force Majeure

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

## § 8 Obligation to pay the purchase price

(1) The Buyer is obliged to pay the agreed purchase price to the bank account nominated by us. The place of payment is 32108 Bad Salzuflen/Germany. Banking fees accrued outside of Germany will be borne by the Buyer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Acknowledgement. A time limit for payment stated on the Order Acknowledgement shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Acknowledgement, payment shall be made within 10 (ten) calendar days after date of invoice. The Buyer's acceptance of the goods is no precondition for the payment to become due.

(2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.

(3) The Buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the Buyer.

(4) The Buyer may only offset any claims insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.

## § 9 Non-Conforming goods; Goods with a defect in title

(1) The goods do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 (1).

(2) The goods are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 (2).

## § 10 Duty of examination and notification

(1) Without prejudice to the legal provisions, the Buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the Buyer is obliged to conduct the examination with the help of external third parties.

(2) Notice of non-conformity has to be made without undue delay. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases after the Buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing, if possible accompanied by appropriate photographs. The non-conformity has to be clearly indicated and described in such a way that we can take remedial actions.

(3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

## § 11 Limitation Period

Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the buyer's claims in respect of the delivery of non-conforming Goods and Goods with a defect in title become time-barred one (1) year after the statutory beginning of the limitation period. For second-hand goods § 4 sec. 1 sentence 4 applies.

## § 12 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability

(1) In case of delivery of non-conforming goods, the Buyer can claim delivery of substitute goods or declare avoidance of the Contract of Sale only in accordance with the legal provisions.

(2) To the extent any costs associated with performing remedies are increased by the fact that the Buyer has removed the goods to a place not stated in the Order Acknowledgement or, in the absence of such an indication, to a place other than the Buyer's place of business, these costs will be borne by the Buyer.

(3) Delivery of substitute goods or repair does not lead to a restart or extension of the limitation period.

(4) If we deliver non-conforming goods or goods with a defect in title or breach any other obligation resulting from the Contract of Sale or the business relationship with the Buyer, the Buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:

(a) We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for damages to which the Buyer has contributed.

(b) The Buyer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the Buyer.

(c) In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent of the purchase price of the goods delivered

late or not at all, and in case of remedies because of delivery of non-conforming goods and/or goods with a defect in title and in cases of all other breach of obligations is limited to the purchase price of the goods affected.

(d) Irrespective of § 12 (4) c), we are not liable for loss of profit.

(e) The aforesaid limitations in § 12 (4) do not apply

- i. to injury of life, body or health,
- ii. if we have acted maliciously, gross negligently or intentionally,
- iii. if we are liable according to product liability laws, and
- iv. to liabilities which may not be excluded or limited according to the applicable laws.

(5) Apart from the aforesaid, the statutory provisions apply.

#### **§ 13 Right to use Software; Rights in documents etc.; Confidentiality**

(1) In case the goods include software, with the delivery of the goods the Buyer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract of Sale. With the exception of the right to make one backup copy, the Buyer is not entitled to copy the software.

(2) We reserve all intellectual property rights in any samples, documents, pictures, drawings etc. arising in connection with the performance of the obligations arising under the Contract of Sale as well as any negotiations conducted prior to the conclusion of a Contract of Sale and such samples, documents, pictures, drawings etc. shall belong exclusively to us. The Buyer may not pass on such samples, documents, pictures, drawings etc. to any third party.

(3) The Buyer warrants that any samples, documents, pictures, drawings etc. provided by the Buyer are free from rights or claims of third parties which could prevent its use anywhere in the world. Should a third party claim an infringement of this third party's rights due to characteristics of the goods which have been predefined by the Buyer, we may suspend the performance of our obligations.

(4) The Buyer shall keep all information obtained from us which is expressly marked as confidential or which is regarded as confidential because of its content strictly confidential and may not pass on such information to any third party without our express prior written agreement.

#### **§ 14 Tools and Jigs**

(1) Should the production of the goods require special tools and/or jigs, we will produce or have produced such tools and/or jigs. The price for such tools and/or jigs needs to be paid by the Buyer in addition to the purchase price for the goods. The purchase price for the tool and/or jig shall be paid as follows:

- 50% at the date of order for the production of the tool and/or jig

- 50% at the date of initial sampling performed by us and the Buyer or at the date a first sample is provided to the Buyer, whichever is earlier.

(2) Title in the tool and/or jig shall pass to the Buyer as soon as the Buyer has made full payment for the tool and/or jig. As long as we produce goods with the tool and/or jig to fulfill Contracts of Sale agreed upon, we are not obliged to surrender such tool and/or jig to the Buyer.

(3) Should the price for the tool as well as the costs for jigs, the development and other project costs be included in the purchase price of the goods, the entire project quantity indicated by the Buyer shall serve as a binding purchase quantity. Should the Buyer thereafter not contract for the whole project quantity, the Buyer shall be obliged to pay the production costs of the tool and/or jig not yet amortized.

(4) The tools and/or jigs will be stored with the diligence of a prudent businessman. Any costs associated with usual wear and tear shall be borne by the Buyer.

(5) We will insure the tool and/or jig against destruction caused by fire with an insurance sum equaling to the value of the tool and/or jig at the time of

destruction. We are not obliged to contract for any further insurance, in particular not for any loss of profit or consequential loss.

(6) In case no goods have been produced with the tool and/or jig for more than 1 (one) year, we may inform the Buyer that we will have the tool and/or jig destroyed should we receive no written information by the Buyer within 4 (four) weeks. Should the Buyer request further storage, such storage shall be conducted at third parties and the Buyer shall be responsible to bear all resulting costs for transportation and storage.

#### **§ 15 Miscellaneous**

(1) Title of the goods that have been delivered remains with us until all of our claims against the Buyer have been settled.

(2) We are not obliged to perform any obligations not stated in the written Order Acknowledgement or in these International Terms and Conditions of Sale.

(3) There are no side agreements to the Contract of Sale.

(4) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.

(5) The Buyer is not entitled to assign his rights and obligations against us to a third party.

(6) The place of delivery is governed in § 5 (2), the place of payment in § 8

(1). For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 32108 Bad Salzflun/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.

(7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

#### **§ 16 Agreement on arbitration and jurisdiction**

(1) All contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us shall be exclusively resolved by arbitration according to the Swiss Rules of International Arbitration (Swiss Rules). The tribunal shall consist of three (3) arbitrators, and if the amount in dispute is inferior to € 250.000, there shall be one (1) arbitrator. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

(2) Instead of bringing an action before the arbitral tribunal in accordance with § 16 (1) we are also entitled to bring an action before the state court which has jurisdiction for 32108 Bad Salzflun/Germany or the state court of the Buyer's place of business, or any national court with jurisdiction according to domestic or foreign law.

#### **§ 17 Severability**

If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.

#### **§ 18 Notice according to the German law on dispute resolution with consumers (Verbraucherschlichtungsgesetz)**

Although these International Terms and Conditions of Sale do not apply to consumers, we herewith precautionary give notice that we are neither willing nor obliged to take part in a dispute resolution before an alternative dispute resolution entity which deals with disputes with consumers.