

# International Terms and Conditions of Purchasing Ninkaplast GmbH

( dated October 2021)

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

(1) The terms and conditions set out in these International Terms and Conditions of Purchasing, which form an integral part of the Contract of Sale, shall apply if (i) the Seller 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 Purchasing apply exclusively to the Contract of Sale. We are not bound by the Seller's terms of business irrespective of whether they conflict with our Terms and Conditions of Purchasing or whether they deviate from statutory provisions.

## § 2 Formation of the Contract of Sale

A Contract of Sale always requires a written order ("Order") and a written acceptance of the offer.

## § 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) Where commercial terms are used the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Purchasing.

## § 4 Obligation to deliver, Passing of risk

(1) The Seller has to deliver the goods referred to in the Order including a packaging that is suitable for the means of transportation.

(2) The delivery has to be made DAP Incoterms 2020 at place of delivery indicated in the Order. If no place of delivery is indicated in the Order, delivery has to be made DAP Incoterms 2020 at our premises in 32108 Bad Salzuflen/Germany. Furthermore, the Seller has to fulfil all the duties imposed on him by the Contract of Sale, these International Purchasing Conditions, the rules of the ICC for the use of the clause DAP Incoterms 2020 as well as other statutory provisions.

(3) The delivery date respectively the delivery period stated in the Order must be strictly complied with. Non-compliance with the agreed delivery periods or delivery dates constitutes a fundamental breach of contract.

(4) If and to the extent we have to give specifications or have to comply with further obligations to cooperate, the Seller has to inform us thereof in writing and has to take into account reasonable response times from our side for the determination of the delivery period or delivery date. If we do not react to such written notice within a reasonable time, the delivery period or delivery date shall not be extended by the time which has elapsed after the reasonable notice period, unless the Seller has informed us about this consequence in his written notice.

(5) Without prejudice to other obligations to inform, the Seller has to inform us in writing with a reasonable lead time of the forthcoming delivery.

(6) The Seller is not entitled to make partial deliveries.

(7) The passing of risk takes place with delivery in accordance with § 4 (2). If by no fault of our own we are prevented from taking delivery of the goods, the temporary inability to take delivery shall not be considered as a breach of contract and we are not in default of acceptance.

## § 5 Outgoing examination

To the extent we are obliged to examine the goods after taking delivery, the Seller has to examine the goods prior to their handing-over to the same extent and has to record the result of this examination in writing.

## § 6 Specifications of the goods

(1) The goods to be delivered have to conform to the specifications and quality requirements set out in the Order. To the extent no specifications or quality requirements are stated in the Order, the goods only conform with the contract if they are fit without re-

strictions for the purpose made known to the Seller or for the purpose for which goods of the same description are usually used for. Furthermore, the goods to be delivered have to conform in every respect to assertions made in prospectuses or other public announcements of which the Seller is or ought to have been aware.

(2) The Seller warrants that the goods comply with all requirements that have to be respected when importing the goods and making them available on the market in Germany.

(3) If the Order includes details of amounts, size and weight and/or the Order is accompanied by pictures, these are binding, unless they are expressly marked as approximate description.

(4) Without prejudice to our statutory rights, the Seller warrants that the goods are free from rights and claims of third parties, which could hinder the usability of the goods in the European Union. This applies in particular for those rights or claims based on title or industrial property.

## § 7 Delivery Note, Invoice and other documents

(1) Irrespective of the Incoterms clause agreed between us and the Seller, the Seller is under a duty to hand over at the agreed delivery date or within the agreed delivery period all documents necessary for the free export, transit or import of the goods in the European Union. Furthermore, if the Seller has its place of business within the European Union he has to provide us with a supplier's declaration.

(2) The Seller is obliged to clearly state the applicable customs tariff number on the delivery note which has to be enclosed to every delivery.

(3) The Seller must clearly state his tax number on his invoices and moreover issue the invoices in accordance with all legal requirements applicable in Germany.

(4) The Seller is only entitled to exercise a lien or to suspend his performance if this is based on a due and undisputed or finally adjudicated counterclaim of the Seller.

## § 8 Obligation to pay the purchase price

(1) We are obliged to pay the agreed purchase price to the bank account nominated by the Seller. The place of payment is 32108 Bad Salzuflen/Germany. Banking fees accrued outside of Germany will be borne by the Seller. The payment is due within 30 (thirty) days after we have received a correct invoice and the Seller has delivered the goods completely and in conformity with the Contract of Sale and has fulfilled all other obligations imposed on him by these International Terms and Conditions of Purchasing in due form.

(2) The agreed purchase price is a fixed price. An increase in the purchase price, for whichever reason, is excluded.

(3) Payment of the purchase price does not imply a confirmation that the goods comply with the legal and/or contractual requirements and is made with reservation.

## § 9 Non-Conforming goods; freedom of rights and claims of third parties

(1) Further to statutory regulations, the goods do not conform to the contract if they do not conform to the requirements set out in § 6 (1) to (3). Furthermore, it does constitute a non-conformity if third parties have claims based on product liability law.

(2) Further to statutory regulations the goods are not free from rights or claims of third parties if the requirements set out in § 6 (4) are not complied with.

## § 10 Duty of examination and notification

(1) We are only obliged to examine the goods in respect of typical deviations of a factual kind in type, quantity, quality and packaging. We are not obliged to conduct an examination that requires the help of external third parties. An examination in relation to the freedom from any right or claim of a third party is not required.

(2) The period for examination only starts at the moment we use or process the goods, however at the latest four (4) months after the goods have been delivered. However, this does not apply to very obvious non-conformities, for which no period of examination is applicable.

(3) Notice of non-conformity has to be made within fourteen (14) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases when we finally knew or ought to have known of the non-

conformity of the goods. We are not obliged to give notice of non-conformity if the Seller knew or must have known the non-conformity based on his outgoing examination.

(4) In the notice of non-conformity we do not have to reserve our rights in respect of the breach of contract. It is sufficient that we describe the non-conformity in general terms. In case the Seller needs further details in order to rectify the non-conformity or in order to secure his own rights of redress, he is obliged to ask us in writing.

(5) The period of foreclosure as per Art. 39 (2) CISG is five (5) years.

#### **§ 11 Limitation Period**

(1) Our claims in respect of the delivery of non-conforming goods become time-barred after three (3) years after the statutory beginning of the limitation period. However, to the extent the claims for compensation of our customers are binding towards us because our customers or their customers have sold the goods in a supply chain to consumers, the limitation period for claims because of delivery of non-conforming goods is five (5) years.

(2) The limitation period in respect of freedom of rights or claims of third parties is ten (10) years.

#### **§ 12 Remedies in case of non-conforming goods and goods which are not free of rights or claims of third parties**

(1) Without prejudice to the statutory provisions, in case of delivery of non-conforming goods or goods that are not free from rights or claims of third parties our right to avoid the contract and/or require delivery of substitute goods does not require a fundamental breach of contract. It is sufficient that the breach of contract is not of only totally minor importance.

(2) Avoidance of the contract needs to be declared within two (2) months in case of late delivery, and within four (4) months in case of other breaches of contract. The period for such declaration of avoidance starts in accordance with the statutory provisions.

(3) In the event we are obliged towards our customers to compensate expenses, we are entitled to be reimbursed by the Seller in the same amount insofar as such expenses are attributable to the fact that the goods delivered by the Seller do not conform with the contract. To the extent the claims for compensation of our customers are binding towards us because our customers or their customers have sold the goods in a supply chain to consumers, the time when the non-conformity has to be existent is determined by the passing of risk to the consumer, also in relation to the Seller.

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

#### **§ 13 Remedies in case of late or non-delivery**

Without prejudice to our statutory rights, should the Seller deliver the goods late or not at all, we are entitled to claim liquidated damages of 1 % of the net purchase price of the respective goods for each week of delay commenced, up to a maximum of 10 %, without any evidence being necessary. This does not deprive the Seller proving that either no damage at all was caused or that the damage caused was lower. Likewise we are not deprived proving that the damage caused was higher than the liquidated damages stated above.

#### **§ 14 Our Rights regarding Software**

In case the goods include software, with the delivery of the goods the Seller grants us a worldwide, irrevocable, transferrable and unrestricted right to use the software. We are entitled to make backup copies of the software.

#### **§ 15 Tools etc.; Rights in documents etc.; Confidentiality**

(1) If we provide tools, appliances or moulds (individually or collectively "Tools"), these remain our sole property and we reserve all intellectual property rights in such Tools. We are at all times entitled to demand surrender of the Tools. The Seller is obliged to store the Tools separately from other items and clearly mark them as our property. The Seller is obliged to contract at its own costs for insurance against damage due to fire and water as well as against theft

of the Tools. Any claims against the insurer are hereby assigned to us. The Tools may only be used by the Seller to produce goods to be delivered to us.

(2) We reserve all intellectual property rights in any samples, documents, pictures, drawings etc. provided to the Seller. These remain our sole property and the Seller is obliged to surrender such to us immediately upon request. Any samples provided by us may only be used by the Seller to produce goods to be delivered to us.

(3) The Seller shall keep all information obtained from us which is expressly marked as confidential or which is regarded as confidential because of its content, in particular any details of our order as well as any technical implementation and customer information, strictly confidential and may not pass on such information to any third party without our express prior written agreement.

#### **§ 16 Miscellaneous**

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

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

(3) The Seller is not entitled to assign his rights and obligations towards us to a third party. In case the Seller purchases parts of the goods from third parties, he is liable for their behavior to the same extent as he would be liable for his own behaviour.

(4) The place of delivery results from § 3 (2), the place of payment results from § 7 (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 Salzuflen/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.

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

#### **§ 17 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 Purchasing, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Seller and us shall be exclusively resolved by arbitration according to the Swiss Rules of International Arbitration (Swiss Rules) by one or more arbitrators appointed in accordance with the said Rules. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be English.

(2) Instead of bringing an action before the arbitral tribunal in accordance with § 17 (1) we are also entitled to bring an action before the national court which has jurisdiction for 32108 Bad Salzuflen/Germany or the national court of the Seller's place of business, or any national court with jurisdiction according to domestic or foreign law.

#### **§ 18 Severability**

If provisions of these International Terms and Conditions of Purchasing should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Seller 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.

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

Although these International Terms and Conditions of Purchasing 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.