General Business Terms and Conditions of NES Nová Dubnica s.r.o. 2017EN

Article I. Introductory Provisions

These General Business Terms and Conditions of NES Nová Dubnica s.r.o. (hereinafter only „GBTs") form an appendix to a framework contract, contract, purchase order confirmation or offer and are an integral part thereof. Placement of an order by the Buyer means the Buyer's unconditional consent with these GBTs. The Buyer's delivery terms shall not be observed, unless they have been accepted in writing by the Seller. The Buyer's order shall be confirmed by the Seller. No other special terms and conditions shall have a priority over these GBTs, unless accepted in writing by the Seller.

If the Seller accepts the Buyer's order, the Seller shall issue a contract and present it to the Buyer. The Buyer shall confirm the contract with his signature and return one original of the confirmed contract to the Seller.

Article II. Price

2.1 The price shall be set by agreement, in accordance with the valid text of Act No. 18/96 Coll., on Prices, as EXW Nová Dubnica, unless stated otherwise. The prices shall be set in EUR, without VAT.

2.2 If the order deviates from the original offer, the Seller reserves the right to adjust the price appropriately.

2.3 The price shall be based on costs as of the time of the offer. If by the delivery date the costs should increase due to changes in the applicable customs and tax regulations, bank charges, or any other conditions that could have not been anticipated at the time of the contract conclusion, the Seller shall be entitled to adjust the prices appropriately.

2.4 If repairs are ordered, the Seller shall provide performances that he deems necessary and meaningful. These shall be charged based on real costs. This shall apply also to any performances and additional performances, the necessity and meaningfulness of which arise during the order execution.

2.5 In the case that the repair costs exceed the offered price of the new product, the Seller is obligated to inform the Buyer thereof prior to the execution of the repair and observe the Buyer's decision.

2.6 The costs incurred by the Seller in the development of the offer for the repair, or in association with appraisals, shall be paid by the Buyer, unless agreed otherwise. This applies also if the repair does not get ordered.

Article III. Payment and Delivery Conditions

3.1 In each order the Buyer is obligated to specify the Buyer's VAT registration number valid in the destination country for the goods (VAT No.). The Buyer is obligated to inform the Seller immediately on any change or cancellation of the Buyer's VAT registration number.

3.2 The delivery terms are set in accordance with INCOTERMS 2010.

3.3 The agreed delivery time applies as long as any unforeseen circumstances or circumstances independent of the parties' will do not occur, such as any force majeure events, that would prevent compliance therewith. These circumstances shall also include armed conflicts, official interventions and prohibitions, delays caused in transport or customs clearance. The Seller reserves the right to change the date of delivery for goods that the Seller purchases for the purposes of selling to the Buyer. In this case, the Seller is obligated to inform the Buyer of the delivery date change with reasonable notice.

3.4 In the case that the goods are ready for dispatch and cannot be dispatched for reasons that are not the Seller's fault, or the Buyer does not want the goods to be dispatched, the Seller may store the goods at the Buyer's cost, in which case the delivery shall be deemed dispatched. The agreed payment terms shall not be affected therewith.

3.5 The Seller is not obligated to deliver the goods to the Buyer and is entitled to cease the production and delivery of the ordered goods if the Buyer is late with a payment for goods.

3.6 In the case of a claim, the Buyer is not entitled to withhold any payments from the Seller or any goods that are to be returned to the Seller, or unilaterally settle his receivables against the Seller. Any claims by the Buyer shall be resolved separately, without affecting the Buyer's obligation to pay the Seller the purchase price for the goods by the agreed due date.

3.7 The Seller is entitled to perform and charge for partial deliveries or preliminary deliveries. The Buyer undertakes to accept such deliveries.

3.8 The Buyer shall pay for the deliveries based on commercial invoices sent or given by the Seller after the delivery of the goods. The Seller is also entitled to request payment prior to delivery of goods in cases, when the Seller registers at least one invoice past its maturity date with the Buyer.

3.9 The day of crediting the owed amount to the Seller's bank account shall be deemed the payment execution date.

3.10 The Buyer may not in any way reassign, transfer or trade any rights, claims or obligations arising out of this contract without a prior written approval from the Seller.

Article IV. Ownership and Transfer of Liability for Damage to Goods

4.1 The ownership title to the goods shall be transferred from the Seller to the Buyer upon crediting the payment for the goods to the Seller's bank account.

4.2 The liability for damage to goods shall be transferred from the Seller to the Buyer in accordance with the agreed delivery term as per INCOTERMS 2010.

4.3 Regarding performances that are not a part of the delivery or partial delivery, the place of performance shall be the place where the performance has been provided. The liability for damage shall be transferred onto the Buyer upon delivery of the performance or a part thereof.

4.4 In the case of a delayed dispatch due to the Buyer's fault, the liability for damage shall be transferred onto the the Buyer on the date of possible dispatch.

4.5 Specially agreed quality or operation tests shall not affect the provisions on the place of performance and transfer of liability for damage.

Article V – Warranty and Liability for Defects of Goods

5.1 The Seller is obligated, provided the agreed payment terms are observed, to remove, in accordance with the following provisions, any fault affecting the functionality of the equipment that existed at the time of delivery, regardless of the fault being of design, material or workmanship nature.

5.2 The warranty period is 12 months, unless otherwise is stated and unless special warranty periods have been agreed for individual parts of the delivery.

5.3 The entitlement to warranty is subject to the condition that the Buyer reports the arisen faults forthwith in writing to the place agreed in the contract.

5.4 If the Buyer breaches any of his obligations of taking care of the goods as stipulated in the documents given by the Seller to the Buyer upon the delivery of the goods, then any claim for faults of the goods shall be void, unless the Seller approves otherwise in writing.

5.5 The Buyer is obligated to inform the Seller on the nature and specification of the apparent faults of the goods, as well as any discrepancies in the quantity of the goods, and do so within ten (10) days from delivery of the goods to the place agreed in the contract.

5.6 The place of warranty claim shall be the domicile of the Seller.

5.7 A warranty claim on the goods does not entitle the Buyer to refuse to execute the payment or refuse to accept further deliveries from the Seller.

5.8 If the Seller accepts a warranty claim and the faults of the goods are unrepairable, the Seller is obligated to provide, within a reasonable time, new or missing goods or appropriate financial compensation.

5.9 The Seller is not liable for any faults of the goods due to: (a) failure to observe the Seller's recommendations for taking care of the goods during transport, storage, handling and inspection, (b) non-standard, unqualified or inappropriate use, installation or testing of the goods, (c) reasons associated with unprofessional assembly of the goods, (d) attempts to modify or repair the goods without a previous written authorization from the Seller.

Article VI. Sanctions

6.1 If the Buyer fails to pay the invoices by their due date, the Seller is entitled to demand a contractual penalty equal to 0,03% of the invoiced amount for each day of the delay.

6.2 The Seller deems confidential any information contained in the contract and any information or documents obtained in association with the contract and the Buyer undertakes no to reveal it or provide access to it in any form to any third person, except in the cases in which it is required by law or the contract.

Article VII. Contract Withdrawal

7.1 In the case of delivery of special goods worth less than 500,00 € it is not possible to withdraw from the contract and the Buyer shall pay the full price of the goods.

7.2 In the case of cancellation of delivery of standard goods prior to the confirmed delivery date or executed delivery, provided the goods have not been unpacked and nothing has been additionally written on the packaging and label, the Buyer shall pay the Seller a cancellation fee of:

- 85% of the price in the case of withdrawal up to 20 days before the performance date
- 95% of the price in the case of withdrawal up to 10 days before the performance date

The Buyer shall inform about the cancellation fee amount within 10 business days after the request for cancellation was precisely defined in writing.

In another case the Seller has the right to refuse the cancellation or repurchase. The Seller shall inform the Buyer about the decision on the repurchase refusal or cancellation fee amount within 10 business days after the the request for cancellation was precisely defined in writing.

7.3 The Buyer is entitled to withdraw from the contract:

a) if the execution of the delivery, or the commencement or continuation of the contractual performance becomes impossible due to reasons on the Seller's side, or the Seller is late despite of the assignment of appropriate additional time;

7.4 The Seller is entitled to withdraw from the contract:

a) if any doubts arise with regards to the Buyer's solvency and the Buyer neither pays advance payments on the Seller's request, nor does the Buyer provide an appropriate collateral prior to delivery; or

b) if the extension of the delivery time due to circumstances specified in clause 7.3 becomes longer than half of the originally agreed delivery time, but at least six months.

7.5 If the assets of one of the contracting parties become subject to bankruptcy or restructuring proceedings, or the bankruptcy proposal is denied for asset insufficiency, the other contracting party shall be entitled to withdraw from the contract without giving any reason.

7.6 Regardless of the Seller's entitlement to compensation for damages, in the case of withdrawal from the contract, any contractual performances that have been provided so far, completely or in part, shall be charged and paid for in accordance with the contract. This applies also if the the delivery or contractual performance has not been yet accepted by the Buyer, as well as to any preparation activities performed by the Seller. Also, instead of the aforesaid, the Seller has the right to request return of already dispatched items.

Article VIII. Liability for Damages

8.1 The Seller is liable for damages only if he demonstrably breaches his obligation arising from the commitment relationship, while the maximum amount of compensation may not exceed 10% of the contractual price.

8.2 If the Buyer fails to comply with the generally binding conditions for assembly, commissioning and use (e.g. as specified in the operating manual), or the official conditions for homologization, the Buyer shall be responsible for damages arising thereof.

8.3 The guarantee limitation as stipulated in clauses 8.1 and 8.2 applies equally also to all customers and their subsequent customers.

Article IX. Industrial Property Rights and Copyrights

9.1 If the Seller develops a product, based on design information, drawings, models and other specifications from the Buyer, the Buyer is obligated to prevent any suits or damage claims against the Seller in the case of breach of any protective rights. The Buyer shall be responsible for these in full extent.

9.2 Documents for the development, e.g. plans, sketches and other technical documents, as well as samples, catalogues, brochures, illustrations, etc., shall remain the intellectual property of the Seller and be subject to the relevant provisions regarding copying, imitating, competition, etc. Clause 9.1 applies also to the implementation documents.

Article X. Final Provisions

10.1 Any previous agreements or declarations of any kind made between the contracting parties and relating to these GBTs are replaced with these GBTs.

10.2 Each contracting party shall immediately inform the other party in writing on any changes in its business license or commercial registration that have a direct impact on the terms and conditions and performance of the contract, as well as on any official commencement of liquidation or bankruptcy proceedings.

10.3 The Seller shall not be in any case responsible to the Buyer for any indirect damages, damages related to lost profit, damages resulting in repressive compensations, or any consequential damages, regardless of the nature of the breached legal obligation they arise from.

10.4 The Contract is subject to Slovak law even in cases that include foreign element pursuant to relevant provisions of Regulation (EC) No. 593/2008 of the European Parliament and of the Council (Rome I) as amended. Any conflicts related or otherwise connected with this Contract that include foreign element shall be resolved pursuant to Article 25 of Regulation (EC) No. 1215/2015 of the European Parliament and of the Council (Brussels I) as amended at court of first instance District Court of Trenčín. Jurisdiction to resolve other disputes arising from or otherwise connected to this Contract shall lie with Slovak courts pursuant to relevant provisions of Act No. 160/2015 Coll. Civil Dispute Code.

10.5 In the case that any provision of these GBTs becomes invalid, the remaining provisions shall remain unaffected.