



5N PLUS

**Selling Terms and Conditions of 5N Plus Additives GmbH (Version 11/2021)**  
5N Plus Additives GmbH, Oderlandstraße 104, 15890 Eisenhuettenstadt

**1. Scope of application, conclusion of contract, form**

- (1) These General Terms and Conditions of Sale (GTCS) shall apply to all contracts of sale and contracts for work and materials (contract) between 5N Plus Additives GmbH with its registered office in Eisenhuettenstadt, Germany, (Seller/We) and our customers who are not consumers pursuant to § 13 BGB (German Civil Code) (Buyer). The GCS apply exclusively; we do not accept the Buyer's general terms and conditions even if the Buyer expressly refers to them in the context of his order.
- (2) The GCS shall also apply as a framework agreement to future contracts with the same Buyer (ongoing business relationship) without our having to refer to them again in each individual case. The GTC shall apply in the version valid at the time of the order and available on our homepage at any time or, in any case, in the version last notified to the Buyer in text form.
- (3) Individual agreements (e.g., framework supply agreements, trade clauses) shall take precedence over the GCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (4) Our offers are subject to change and non-binding. The provision of the goods by the Buyer shall be deemed to be a binding offer to enter into a contract which, in the absence of any provision to the contrary, shall remain valid for at least one week.
- (5) A binding contract for the listed goods shall be concluded upon written order confirmation or delivery of the goods together with the delivery bill. This shall also apply if the order confirmation or the delivery shows minor or customary deviations from the order (e.g., regarding quantities, composition, etc.). Such deviations shall be deemed to have been approved if and to the extent that the Buyer does not object to them without undue delay (as a rule within 5 days).
- (6) Legally relevant declarations and notifications made by the Buyer after the conclusion of the contract (e.g., setting of deadlines, objections, notification of defects, reduction/withdrawal) shall be made in writing, i.e., in written or text form (e.g., letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the declarant, shall remain unaffected.

**2. Purchase price, ancillary costs, due date**

- (1) Unless otherwise stated in our order confirmation or in individual agreements, our prices current at the time of conclusion of the contract shall apply, ex warehouse, plus statutory VAT, public charges (e.g., customs duties, fees) and other ancillary costs (e.g., packaging and shipping costs). All ancillary costs shall be quantified in the order confirmation if possible, but at the latest in the invoice.
- (2) The purchase price including ancillary costs shall be due for payment within 14 days of dispatch of the goods (invoice date) without deductions, unless otherwise agreed or - revocable at any time - stated in the invoice in favor of the Buyer (e.g., cash discount, longer payment period). We shall be entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.
- (3) We shall be entitled to issue invoices electronically, subject to the Buyer's objection. All payments shall be made by bank transfer in EURO to our bank account stated in the invoice or (if applicable against discount) by SEPA direct debit.

**3. Default in payment, counter rights, plea of uncertainty**

- (1) The Purchaser shall be in default upon expiry of the payment period pursuant to Clause 2(2). The default interest shall amount to 9 percentage points per annum above the respective base interest rate. Subject to further damages, we shall also be entitled to payment of a lump sum of 40 euros. Our claim to commercial maturity interest in accordance with § 353 HGB remains unaffected.

- (2) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been established as final and absolute or is undisputed. This shall not apply insofar as the counterclaim directly concerns our main performance obligation under the same contract.
- (3) If, after conclusion of the contract, it becomes apparent (e.g., by filing for insolvency proceedings) that our contractual claims for payment are jeopardized by the Buyer's inability to perform, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary, after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately. The statutory provisions on the dispensability of setting a deadline and further statutory claims shall remain unaffected in all cases.

**4. Delivery Terms, Shipment, Delay in Delivery**

- (1) Unless otherwise stated in our order confirmation or in individual agreements, delivery shall be made ex our works/warehouse in Eisenhuettenstadt, which is also the place of performance for the delivery and any subsequent performance. If no collection has been agreed, delivery shall be made by the method of dispatch specified by us to the Buyer's place of business or to the delivery address specified by the Buyer in the order.
- (2) Any shipment of the goods shall be at the expense and risk (loss, deterioration, and delay) of the Buyer. We shall be entitled, but not obliged, to take out transport insurance customary in the industry at the Buyer's expense. If the shipment is delayed for reasons beyond our control, the risk shall pass to the Buyer at the time of notification of readiness for shipment. The statutory transfer of risk due to default in acceptance as well as other rights resulting for us from the default in acceptance (e.g., compensation for storage costs or other additional expenses) shall remain unaffected.
- (3) We shall be entitled to make partial deliveries within the framework of the delivery periods and what is reasonable for the Buyer.

**5. Delivery period, non-availability of performance, delay in delivery**

- (1) The delivery period shall be agreed individually or stated by us in the order confirmation. If this is not the case, the delivery period shall be approximately four weeks from conclusion of the contract.
- (2) If we are unable to meet a binding delivery deadline for reasons for which we are not responsible (non-availability of the service, e.g., due to late delivery by our own suppliers or force majeure), we shall inform the Buyer of this without delay, stating the reason for the delay and, if applicable, the new expected delivery deadline. Insofar as the service is no longer available at all or is not available within the new delivery period, we shall be entitled to withdraw from the contract; in this case, we shall immediately refund any consideration already paid by the Buyer.
- (3) The prerequisites and consequences of any delay in delivery shall be determined in accordance with the statutory provisions. In particular, we shall not be in default as long as the Buyer is predominantly responsible for the delay (e.g., due to lack of information) or if performance is not affected due to other circumstances for which we are not responsible. In all cases, a written reminder from the Buyer shall be required.
- (4) If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) of the delayed goods for each full calendar week of the delay, but not more than a total of 5% of the contractual delivery value. We reserve the right to prove that the Buyer has not suffered any damage because of the delay or that the damage is significantly less than the aforementioned lump sum. Furthermore, in the event of a delay in delivery on our part, the Buyer shall be entitled to withdraw from the contract in accordance with the statutory provisions, i.e., as

a rule at the earliest after the unsuccessful expiry of a reasonable grace period set by him.

- (5) Further contractual or statutory rights of the contracting parties as well as the statutory provisions on the performance of the contract in the event of an exclusion of the obligation to perform (e.g., due to impossibility) shall remain unaffected.

#### **6. Retention of title**

- (1) We shall retain title to the goods (reserved goods) until all claims arising from the contract and an ongoing business relationship have been paid in full.
- (2) The reserved goods shall be treated with care and stored separately from other goods. They shall be insured to the usual extent at replacement value against property damage (in particular fire, water and theft damage).
- (3) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The purchaser must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g., seizures) have access to the reserved goods.
- (4) In the event of any breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand surrender of the reserved goods based on the reservation of title. The demand for surrender does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the surrender of the reserved goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.
- (5) Until revoked in accordance with c) below, the Buyer shall be entitled to process and/or sell the reserved goods in the ordinary course of business (extended reservation of title). In this case, the following provisions shall apply in addition:
  - a) Processing (including mixing and combining) shall be carried out for us as the manufacturer of the newly created product. We shall acquire direct ownership of the product at full value or - if the processing is carried out from materials of several owners - co-ownership of the product in the ratio of the value of the reserved goods to the value of the product. In all other respects, the same shall apply to the resulting product as to the goods subject to retention of title.
  - b) The Buyer hereby assigns to us by way of security any claims against third parties arising from the resale of the reserved goods or the product - in the event of our co-ownership on a pro-rata basis. We accept the assignment. The same shall apply to other claims which take the place of the reserved goods or otherwise arise in respect of the reserved goods (e.g., insurance claims or claims in tort in the event of loss or destruction). The obligations of the Buyer set forth in Clauses 6(2) and 6(3) shall also apply in respect of the assigned claims.
  - c) The Buyer shall remain authorized to collect the assigned claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, and we do not assert the retention of title by exercising a right pursuant to clause 6(4). If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Buyer's authorization to further sell and process the reserved goods.
  - d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

#### **7. Examination and notification of defects**

- (1) We shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). The Buyer is obliged to inspect the goods im-

mediately for defects (including wrong and short delivery) in accordance with the statutory provisions (§§ 377, 381 HGB) and, insofar as this is feasible in the ordinary course of business, also to investigate any suspicion of defects with reasonable effort. In any case, an inspection shall be carried out again immediately before further processing, e.g., by mixing.

- (2) If a defect becomes apparent upon delivery, inspection or at any later time (also due to complaints on the part of a customer of the Buyer), we must be notified thereof without delay. In any case, obvious defects must be notified to us in writing within 3 days of delivery and defects which are not visible during the inspection must be notified within the same period of time after discovery. In addition, transport damage must also be reported directly to the transport company and noted in the acknowledgement of receipt. All notifications and complaints must be made in writing.
- (3) If the Buyer fails to duly inspect the goods and/or give notice of defects, our liability for the defect not notified or not notified in due time or not notified in due form shall be excluded in accordance with the statutory provisions.

#### **8. Claims for defects of the purchaser**

- (1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. The special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to § 478 BGB). However, claims from supplier recourse shall be excluded if the defective goods have been further processed by the purchaser or another entrepreneur, e.g., by mixing them with another product.
- (2) The basis of the liability for defects is above all the agreement made on the condition of the goods. All product descriptions which are the subject of the individual contract or which have been made known by us (e.g., certificates of analysis) shall be deemed to be an agreement on the quality of the goods. We shall not be liable for public statements of third parties (e.g., advertising statements) to which the Buyer has not expressly referred to us as being decisive for his purchase.
- (3) In all other respects, the question of defectiveness shall be assessed in accordance with the statutory provisions. Insofar as compliance with public-law requirements (including product- or market-related obligations) is relevant in this context, only the regulations applicable to the marketability of the goods within the Federal Republic of Germany shall apply as a standard. Requirements in other countries, in particular the country of destination of the product, which deviate from this to our disadvantage, shall only apply if this has been expressly agreed in the individual case.
- (4) The Buyer's claims based on defects shall be subject to the condition that he has complied with his obligations to inspect the goods and to give notice of defects in accordance with Clause 7. Minor or customary deviations of the delivery from the ordered goods (e.g., regarding quantities, composition, etc.) shall not constitute a defect.
- (5) If the delivered goods are defective, we may choose whether to effect subsequent performance by remedying the defect (subsequent improvement) or by delivering goods free of defects (replacement delivery). The right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- (6) We may make the subsequent performance dependent on the Buyer paying the purchase price due. The Purchaser shall be entitled to retain a part of the purchase price in proportion to the defect. The expenses necessary for the purpose of subsequent performance, in particular labor and material costs (not: costs of transporting the goods to the place of subsequent performance), shall be borne by us if there is a defect. Otherwise, we may demand reimbursement of the costs incurred (in particular inspection and transport costs) from the Buyer, unless the lack of defectiveness was not apparent to the Buyer.
- (7) If the supplementary performance has failed or if a reasonable deadline set by the Buyer for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the Buyer may withdraw from the contract or reduce the purchase price. In the case of an insignificant defect, however, there

shall be no right of withdrawal. Claims of the Purchaser for damages or reimbursement of futile expenses shall only exist in the event of defects in accordance with the provisions of Clause 11.

- (8) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from defects of quality and title (warranty period) shall be one year from delivery. After expiry of the warranty period, claims for defects are excluded. This shall also apply to claims for damages due to defects. Special statutory provisions on the limitation period (in particular §§ 438 para. 1 no. 1 and 2, para. 3, 444, 445b BGB) shall remain unaffected.
- (9) As a rule, we shall not be obliged to inspect the components and materials used by us for manufacture vis-à-vis the Buyer. If such an obligation should exist due to the special circumstances of the individual case, it shall not be a material contractual obligation. We do not assume any responsibility for the manufacturing process of our suppliers. Even outside the liability for defects, only the regulations applicable to the marketability of the goods within the Federal Republic of Germany (e.g., information obligations) shall be binding on us, unless otherwise expressly agreed.
- (10) In the event of defects, the Buyer shall only be entitled to claim damages or reimbursement of futile expenses in accordance with the above provisions in conjunction with the limitations pursuant to Section 9.

#### **9. Compensation for Damages, Withdrawal**

- (1) We shall be liable for damages in accordance with the statutory provisions, unless otherwise stipulated below.
- (2) In the event of breaches of duty - irrespective of the legal grounds - we shall be liable for intent and gross negligence within the framework of fault-based liability.
- (3) In the case of simple negligence and milder standards of liability (e.g., care in one's own affairs) we shall only be liable:
  - a) for damages resulting from injury to life, body, or health, and
  - b) for damages resulting from a not insignificant breach of a material contractual obligation (an obligation the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (4) The above limitations of liability shall also apply vis-à-vis third parties and in the event of breaches of duty by or in favor of persons for whose fault we are responsible in accordance with statutory provisions. The provisions of Section 10 shall apply to claims under the Product Liability Act.
- (5) The Buyer may only withdraw from or terminate the contract due to a breach of a contractual obligation that does not consist of a defect if we are responsible for the breach of obligation. The Buyer's right to withdraw from the contract in the event of a delay in delivery pursuant to Section 3(3) shall remain unaffected, including the statutory provision on the burden of proof. In all other respects, the statutory requirements and legal consequences shall apply to the rights of rescission and termination.

#### **10. Product liability**

- (1) Our liability for defective products vis-à-vis third parties (including employees, staff etc. of the Buyer) shall be governed by the statutory provisions. The Buyer may derive claims against us from this, in particular within the framework of a joint and several debtor compensation, at most to the extent that we ourselves are liable in the external relationship and we have culpably (co-)caused the defect.
- (2) If the Buyer is obliged to carry out a risk prevention measure (e.g., product recall) due to a defective product delivered to him by us, we shall participate in the costs demonstrably incurred by the Buyer for this purpose in accordance with the statutory provisions, but only to the extent that:
  - a) we ourselves are obliged to avert danger and have culpably (co-)caused the defect of the product;
  - b) the purchaser has informed us in advance of the type and scope of the risk prevention measure, including the participation attributable to us - insofar as this is possible and reasonable - and has given us the opportunity to comment; and

c) the risk prevention measure carried out was legally and necessary, considering all circumstances of the individual case.

- (3) If claims are asserted against us by third parties due to a defective product delivered by us to the Buyer, the Buyer shall indemnify us against such claims to the extent that the Buyer is solely or predominantly responsible internally for the defect giving rise to the liability, in particular due to defective inspection and/or further processing of the goods, taking into account any agreements on quality assurance existing between the parties or instructions and directions given by us.

#### **11. Choice of Law, Place of Jurisdiction**

- (1) The laws of the Federal Republic of Germany shall apply to these GCS and the contractual relationship between the parties, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The choice of law shall also apply to non-contractual obligations that are closely connected with the contract. In all other respects, the scope and extent of the choice of law shall be determined in accordance with the statutory provisions. The conditions and effects of the retention of title shall be governed by the law of the respective place of storage of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective thereafter.
- (2) If the Buyer is a merchant, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our place of business in Eisenhuettenstadt, Germany (local or regional court). The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to Section 2(1) or a prior individual agreement or at the Buyer's general place of jurisdiction. Prior statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.