

General Terms of Business of NICI GmbH

(valid as of September 2013)



1 Definitions

- 1.1 In the following general terms of business the term “supplier” shall mean NICI GmbH, of Langheimer Straße 94, 96264 Altenkunstadt. The “customer” shall mean the party to the contract with the supplier and “contract” shall mean the contractual relationship to be forged.
- 1.2 The term “performance” shall mean the supplier’s contractual obligations, even where the objective is to sell and supply goods.

2 Application of terms and conditions

- 2.1 The supplier’s offers and performance shall be based exclusively on these general terms of business. They therefore also apply to all future business dealings, even if not again expressly agreed. These terms and conditions shall be deemed accepted by not later than the date of acceptance of performance. Counter-confirmations by customers referring to their own trading or purchasing conditions are hereby rejected.

3 Orders and order acceptance

- 3.1 The supplier’s offers are tendered without obligation and are not binding. The supplier shall be entitled to resell performance to a third party between offer and acceptance. Customers’ orders shall only be binding on the supplier once they have been expressly confirmed by the supplier in writing or once the supplier has rendered performance.
- 3.2 Performance quality must be as stated in writing in the contract. Those quality criteria constitute an absolute description of performance. The supplier shall be entitled to modify quality unilaterally if this should be required by law or if it should reflect a technical improvement and the use under the contract is not adversely affected thereby. The customer itself shall be responsible for assuring itself that the performance ordered is suitable and fit for its intended purpose; this shall apply even if the supplier should advise the customer on development in any way or provide any other support.
- 3.3 If the supplier should provide the customer with samples or specimens before or after concluding the contract they shall not have to be of the quality stipulated in the contract. The first sentence shall apply mutatis mutandis to drawings, diagrams, sizes, weights and other data provided to the customer by the supplier before or after the conclusion of the contract (e.g. in the form of sales documents, brochures and catalogues).
- 3.4 The supplier shall fully retain all rights to any cost estimates, drawings, samples, specimens, diagrams, its own sample items or other documentation (“documentation”) that it provides to the customer. The customer shall not have the right to make documentation, or the content thereof, accessible to third parties without the prior written consent of the supplier. At the request of the supplier the customer shall be obliged to immediately deliver up all documentation to the supplier in full if it should no longer be required by the customer in the ordinary course of business or if no order should ultimately be placed by the customer. The supplier shall only return samples or drawings provided to it by the customer if the customer should request their return. If no order should be placed the supplier shall be entitled to destroy any samples and drawings passed to it once three months have elapsed since tendering its offer.
- 3.5 If the customer should be a new customer the minimum order figure for the first order shall be € 500,00.

4 Advertising and labelling

- 4.1 If any public statement should be made by the manufacturer, the supplier, an employee or other agent as to the quality of performance or of an item sold (e.g. weight, size, colour, material, quality and technical data), particularly in advertising, sales documenta-

tion, brochures and catalogues or on labelling, it shall be assumed that such statements did not cause the contract to be concluded by the customer.

5 Prices

- 5.1 The supplier’s prices are net prices. Unless provided to the contrary in paragraph 5.2 below, they do not include the cost of transportation/despatch (particularly express delivery, courier services etc), value added tax or any other costs associated with the performance of the contract (“extra costs”). Unless stipulated to the contrary in the contract, all of the supplier’s prices shall be quoted in euros. Fixed prices shall require an express written agreement between the supplier and the customer.
- 5.2 For orders with a value of less than EUR 100,00 deliveries shall be charged by the supplier according to the actual cost of packaging plus a lump sum for despatch of EUR 10,00. Order value limits for carriage paid deliveries and currently valid transport charges are listed on our internet homepage www.nici.de/dealer/agb
- 5.3 If the supplier has incurred extra costs it may claim reimbursement from the customer. This shall only apply in relation to transportation/despatch costs if the supplier should be liable for transportation notwithstanding paragraph 5.1.
- 5.4 Prices shall be the prices stated by the supplier or, if not stated in a particular case, the prices shown in the supplier’s current price lists at the date of the order. After giving the customer due notice and before rendering performance the supplier shall be entitled to increase agreed prices as necessary due to general price trends outside the supplier’s control (such as variations in exchange rates, currency regulations, customs duty fluctuations and rises in the cost of materials or in manufacturing costs) or as required due to a change of supplier.
- 5.5 If the supplier should take back performance rendered without acknowledging any legal liability and on a goodwill basis, the supplier shall be entitled to compensation for costs in the sum of 20% of the invoice figure for the performance concerned. This amount shall be reduced if the customer can prove that the actual cost incurred is lower than the lump sum charged under the first sentence.

6 Performance/delay in performance; parts to be supplied

- 6.1 Agreed performance deadlines or periods may be either binding or non-binding.
- 6.2 An agreement on performance deadlines shall only be binding if the supplier expressly states in writing that it is to be liable if an agreed deadline/period is exceeded.
- 6.3 The supplier shall not be responsible for delays in performance resulting from force majeure or from events that make performance impossible or substantially more difficult for the supplier (and not just temporarily) - including, in particular, strikes, lock-outs and official orders, even if they should occur at the supplier’s own suppliers or their sub-suppliers - and even if binding deadlines and periods have been agreed. Such delays shall entitle the supplier to postpone performance by the length of time that the impediment lasts plus a reasonable start-up period, or to rescind the contract in whole or in part with regard to the element not already performed. The first and second sentences shall apply mutatis mutandis to delays in performance as a result of the customer’s failure to duly provide the supplier, before performance is rendered, with any documentation, information and components that the supplier deems necessary in order for it to render performance.
- 6.4 If the customer is to provide the supplier with components they shall be delivered “free at the supplier’s works”. The customer shall provide the supplier with an additional quantity of components of 5 to 10% - as agreed - but of at least 5%, in good time and of the agreed quality to cover any rejects, so that the supplier is

- able to process goods without interruption.
- 6.5 If the delay in performance should last for longer than one month the customer shall be entitled, on setting a reasonable deadline, to rescind the contract in respect of the element not yet performed.
- 6.6 If the supplier should be responsible for failure to comply with deadlines and periods agreed to be binding and if it should be in default the customer shall be entitled to compensation for default in the sum of 0.5% of the invoice value for the performance affected by default for each full week of such default up to a maximum total figure of 5% of the invoice figure for the performance affected by the default. The sum shall be reduced if the supplier can prove that the actual amount of loss is lower than the lump sum charged in accordance with the first sentence. All other claims are excluded unless default should be based on intent or gross negligence on the part of the supplier.
- 6.7 The supplier shall be entitled to render partial performance at any time unless partial performance is of no interest to the customer. Where special designs are ordered the supplier shall also be entitled to deviate from the agreed order quantity by up to +/- 10%. The supplier shall be entitled to assign the rights and obligations under the contract to a third party, including the rendering of performance.
- 6.8 Where performance is to be rendered as and when called for by the customer, the customer shall be obliged to give the supplier written notice of such calls at least four weeks before performance is to be rendered, to include a specific description of such performance and stating the required date of performance. Changes requested by the customer after a call has been made shall only be taken into account by the supplier if expressly agreed.
- 6.9 Deliveries shall basically be made ex-works (Incoterms 2000) at the supplier's head office. In such cases the risk of loss shall pass to the customer on the date on which the supplier informs the customer that its performance is ready for collection.
- 6.10 If the customer should default in its acceptance the supplier shall be entitled to a lump-sum amount for costs in the sum of 0.5% of the invoice value for the performance in question for each full week of delay in acceptance. That sum shall be reduced if the customer can prove that the actual amount of loss is lower than the lump sum charged under the first sentence. Further claims on the supplier's part shall not be affected hereby.
- 6.11 If the supplier should despatch goods at the customer's request the risk of transportation shall be borne by the customer irrespective of who is to bear the cost of despatch/transportation. This particularly applies to despatch or carriage by the supplier, although this shall not be deemed an agreement with the customer for the obligation to be discharged at the customer's place of domicile [Bringschuld]. If despatch should be delayed due to circumstances for which the customer is responsible the risk of loss shall pass to the customer on the date of readiness for despatch. If the customer should default in its acceptance the risk of loss shall pass to the customer on the date on which the supplier offers to hand over the goods.
- 6.12 If the supplier should bear all or part of the cost of transportation/despatch the supplier shall be entitled to specify the route as well as the mode of despatch. If the customer should require a different route and/or a different mode of despatch and if the supplier should meet those requirements the customer shall bear the difference in cost between the mode of despatch or route required by it and the mode of despatch or route specified by the supplier.
- 6.13 In cases under paragraph 6.10 the supplier shall undertake storage at the customer's risk and expense.
- 7 Retention of title**
- 7.1 Until satisfaction of all claims (including all balance claims on current account) accruing to the supplier against the customer either now or in the future on any legal grounds whatsoever, the supplier shall be provided with the security laid down in the following paragraphs, which it shall then release on request and as it may choose to the extent that the value thereof constantly exceeds the amount and value of all claims by more than 20%.
- 7.2 The supplier retains title to the goods supplied. Processing and transformation shall always be carried out for the supplier as manufacturer but without any obligation on it. If the supplier's title should be extinguished as a result of its goods being combined with other goods it is hereby agreed that the customer's title to the combined item shall pass to the supplier pro rata according to value (invoice value). The customer shall safeguard the supplier's title free of charge. Goods to which the supplier retains title are hereinafter referred to as "retention goods".
- 7.3 The customer shall be entitled to process and sell retention goods in the ordinary course of business provided that it is not in default in relation to the supplier. Pledging and the transfer of title as collateral shall not be permitted. Claims relating to retention goods arising on resale or on any other legal grounds (insurance, tort) - including all balance claims on current account - are hereby assigned to the supplier by the customer in full by way of security. The supplier irrevocably authorises the customer to collect debts from claims assigned to the supplier on the latter's behalf but in its own name. This debt collection authority may only be revoked if the customer should not duly comply with its obligations to make payment. When required to do so by the supplier, the customer shall disclose the assignment and provide the necessary data and information.
- 7.4 In the event of a third party laying claim to retention goods the customer shall point out that the supplier has title to them and immediately inform the supplier accordingly. Costs and damages shall be borne by the customer.
- 7.5 In the event of improper conduct on the part of the customer - particularly in the event of default on its payments - the supplier shall be entitled to recover the retention goods or, where appropriate, require an assignment of the customer's entitlement to have them delivered up by a third party. Neither such recovery nor the pledging of retention goods by the supplier shall constitute rescission of the contract - unless §§ 488-507 of the BGB [German Civil Code] should apply.
- 7.6 Cash payments, bank transfers and payments by cheque which are made against submission of a bill of exchange issued by the supplier and accepted by the customer shall not be deemed performance in accordance with the first sentence until the bill of exchange is honoured by the drawee so that the supplier is therefore released from its liability on the bill of exchange. The agreed retention of title (notwithstanding other more extensive agreements) shall therefore continue to apply until such time as the bill of exchange is honoured in the supplier's favour.
- 8 Terms of payment**
- 8.1 The customer shall pay for performance by the supplier after it has taken place and within 30 days of the invoice date net or within 14 days of the invoice date at a 2% discount. When determining whether payment has been made on time the date on which the money is received or unreservedly credited to the supplier's account shall be decisive.
- 8.2 Payment shall be made by way of a bank transfer to the supplier. The supplier shall not be obliged to accept payment by cheque or bill of exchange; in all instances a cheque or bill of exchange shall be deemed to be submitted by way of performance only. Such submission shall not result in the debt being deferred. The costs associated with realisation of a cheque or bill of exchange shall be borne by the customer. If the customer should make payment using funds that the customer has obtained by discounting an accepted bill of exchange the claim to payment shall not be extinguished until the bill of exchange is honoured by the customer.
- 8.3 Alternatively to a bank transfer, the customer may grant the supplier a SEPA direct debit mandate. The money collection will follow 5 days after invoicing with a discount of 4% on all discountable amounts. The pre-notification period is reduced to 1 day. The customer makes sure that his/her account has sufficient funds. Cost which may arise from non-redemption of a direct debit charge are at the expense of the customer as long as the non-redemption was not caused by the supplier.
- 8.4 If the customer should fail to meet its obligation to make payment within the period specified in paragraph 8.1 ("late payment") the

- supplier may charge interest from the expiry of that period at the rate of 8% above current European Central Bank base rate.
- 8.5 In the event of late payment the supplier may charge a one-off sum of 5% of the invoice figure in settlement of administrative costs incurred. That sum shall be reduced if the customer should prove that the cost actually incurred is lower than the lump sum charged under the first sentence.
- 8.6 If the customer should be in default with any obligation to make payment or if circumstances should arise as a result of which the customer's financial position worsens or its creditworthiness deteriorates, all other debts due to the supplier by the customer shall then at once become due and payable. In such a case the supplier shall be entitled to rescind the contract, to demand the lodging of security, to demand payment as and when performance is rendered or, on giving the customer prior written notice, to refrain from rendering further performance until such time as payment is made in full or there is a change in the circumstances referred to in the first sentence. A deterioration in the customer's financial position shall be assumed, in particular, if the customer's cheques or bills of exchange should not be honoured due to circumstances for which it is responsible.
- 8.7 Unless otherwise provided by law, the customer may only offset debts due to the supplier against its own counterclaims if those counterclaims are not denied, are established by a final court judgment or have reached the judgment stage. The same shall apply to the exercise of a right of retention, including rights under § 369 of the HGB [German Commercial Code].
- 8.8 Notwithstanding paragraph 8.1 the supplier may also require payment to be made before performance is rendered. In that eventuality paragraphs 8.3 and 8.4 shall not apply.
- 9 Invoicing**
- The customer agrees to receive its invoices, which are sent by the supplier or a service provider authorised by the supplier, electronically (e.g. via email) with or without digital signature. In this case the customer is able to access the supplier's invoice archive or the invoice archive provided by the service provider.
- 10 Liability for material defects and acceptance**
- 10.1 Unless provided to the contrary below, liability for material defects in performance by the supplier shall be governed by statutory provisions.
- 10.2 The customer's claims for material defects shall be statute-barred 12 months after performance. The period shall begin to run from the date of handover to the customer irrespective of the customer's knowledge of any defect in performance.
- 10.3 The customer shall be obliged to check performance immediately after handover. The customer shall promptly notify the supplier in writing of any defects ascertained when checking performance following handover and shall notify it of any other defects as soon as they are discovered, in each case describing the defect and stating the date of discovery. If the customer should not duly and promptly comply with this duty to notify the supplier, performance shall be deemed approved by the customer. The customer shall initially only be entitled to demand subsequent performance from the supplier. The supplier may choose whether to remedy the defect or deliver a non-defective item by way of subsequent performance. If subsequent performance by the supplier should prove abortive the statutory provisions shall apply. The right to subsequent performance is excluded in the event of immaterial defects.
- 10.4 In the event of breach of a duty of performance by the supplier that does not consist of a defect in the performance itself the customer shall only be entitled to rescind the contract if the supplier should be responsible for the breach of its duty of performance. The supplier does not guarantee that its performance will work smoothly in conjunction with other products.
- 10.5 Unless otherwise provided by statute, claims for material defects on the part of the supplier shall be excluded in the following cases in particular:
- (a) Where the customer has had changes made to that performance by a third party or has processed such performance;
- (b) Where the customer disregards certain instructions for use given by the supplier in connection with its performance, particularly the processing and/or user instructions enclosed or attached, or where it uses accessory parts from other suppliers in conjunction with the supplier's performance;
- (c) Where the customer uses the performance for purposes other than those assumed in the contract or for abnormal purposes or where it does not carry out assembly operations properly;
- (d) In the case of special products that the supplier manufactures in accordance with the purchaser's instructions or construction documentation, in as much as the defect is due to such instructions or construction documentation provided by the purchaser.
- 10.6 Unless otherwise provided by statute, in the event of defective performance the customer may only claim damages from the supplier in the following additional circumstances:
- (a) If the supplier does not render prompt performance or does not do so in accordance with the contract, the customer must give the supplier written notice allowing it a reasonable period of time in which to render performance. That notice must contain the statement that the customer will refuse to accept performance after that period has expired. If the period set by the customer should expire without result any entitlement to performance shall be ruled out;
- (b) If the customer should rescind the contract with the supplier for a defect in performance the supplier may require the customer to state in writing to the supplier, within a period of 2 weeks of claiming rescission, whether it intends to abide by rescission of the contract or to claim damages instead. If the customer should not inform the supplier of its choice between these two options in time the customer's claim in damages shall be ruled out.
- 10.7 If acceptance of performance and/or partial performance should have been agreed the customer shall be obliged to effect such acceptance within one week of notification of completeness by the supplier. The customer shall also be obliged to accept performance if there should be immaterial defects that do not especially hinder usage.
- 10.8 If, for reasons for which the customer is responsible, the latter should fail to accept performance or should accept performance and not object to any material defects within ten days of recourse thereto, performance shall be deemed accepted.
- 11 Quantum of damages**
- 11.1 Notwithstanding the legal grounds, the supplier shall only be liable for loss or damage caused by a defect in the performance itself or by an act or omission to the extent of the loss or damage that is foreseeable and typical of the contract subject to the following limits:
- (a) for intent or gross negligence on the part of statutory representatives, a member of staff or other agent acting for the supplier: no limit;
- (b) for culpable infringement of material contractual obligations (fundamental breach of contract) by the supplier, its statutory representatives or other agents, in the absence of intent or gross negligence: limited to the invoice value of the performance. Fundamental breach of contract shall mean breach of obligations the fulfilment of which makes it possible for the contract to be duly performed and on compliance with which the contracting party is normally entitled to rely.
- 11.2 The supplier shall only be liable for loss or damage caused by the conduct of a member of staff or agent if such persons were acting in the performance of their duties. The supplier shall also be exempt from such liability if the loss or damage is due to circumstances that it could not avoid even by taking the greatest care and the consequences of which it could not avert (e.g. strikes,

- force majeure).
- 11.3 Any other liability on the part of the supplier shall be ruled out unless mandatory legislation should provide otherwise. The supplier shall not be liable, in particular, for breach of ancillary obligations, lack of commercial success, loss of profits, indirect loss, consequential loss or loss or damage resulting from third-party claims made against the customer.
- 11.4 The limits on liability under paragraphs 10.1 to 10.3 shall not apply to personal injuries, fatalities or damage to health.
- 12 Moulds**
- 12.1 Moulds for special designs produced by the supplier or by third parties on its behalf shall be and remain the property of the supplier. If the customer should have assumed responsibility for the cost of producing such moulds then, unless otherwise agreed, they shall be used exclusively for the customer's orders as long as it complies with its obligations in relation to payment and acceptance. The supplier's obligation to look after and use the moulds exclusively for the customer's purposes shall expire if no further orders of a reasonable size are placed for deliveries from the mould within two years of the latest delivery of goods.
- 12.2 If it should be agreed that the customer should be the owner of the moulds, title to the moulds shall pass to it on payment of the full purchase price. Handover shall be replaced by circumstances in which, at that time, a legal relationship is deemed established on the basis of which the supplier is obliged to keep the moulds for the customer free of charge and the customer may demand that the moulds be delivered up. Despite that entitlement on the customer's part to have the moulds delivered up and notwithstanding the life of the moulds, the supplier shall be entitled to exclusive possession of the moulds as title holder until two years have elapsed without any more goods having been delivered since the latest delivery of goods.
- 12.3 In the cases covered by paragraphs 12.1 and 12.2, if a customer has made moulds available on loan, the supplier's liability to look after and take care of the moulds shall be confined to the duty of care that the supplier would show in its own affairs. The cost of maintaining and insuring the moulds shall be borne by the customer.
- 12.4 The supplier's obligations in relation to moulds owned by the customer and made available on loan shall come to an end if the customer does not collect the moulds when requested to do so after the order has been completed. If the customer should not fully comply with its contractual obligations the supplier shall have a right of retention over the moulds owned by the customer and made available on loan.
- 13 Intellectual property rights and copyright**
- 12.1 If a third party should bring justified claims against the customer for infringement of an intellectual property right or copyright (hereinafter called "intellectual property right") as a result of performance developed and/or rendered by the supplier, the supplier shall be liable as follows unless otherwise provided by statute:
- (a) The supplier shall choose, at its own expense, to either acquire the right to use the performance developed and/or rendered or to alter the performance in such a way that the intellectual property right is no longer infringed, or to exchange performance if the use of performance assumed under the contract will not be adversely affected thereby, or to take back its performance and refund the customer the price paid for the same less any loss in value of that performance. If the supplier should be unable to ultimately grant the customer the right of use required under the contract through the measures stated in the first sentence the customer shall be entitled to rescind the contract after allowing the supplier a reasonable period of time for compliance;
- (b) The supplier shall only be obliged to carry out the measures stated in the first sentence of subparagraph (a) if the customer promptly gives the supplier written notice of the claims made by the third party describing the infringement concerned, if it does not acknowledge the infringement and if the customer grants the supplier unlimited powers to take decisions relating to its defence and the conduct of settlement negotiations. If the customer should stop using the performance in order to mitigate loss or for any other important reason it shall be obliged to indicate to the third party that the cessation of its use does not constitute acknowledgement of an infringement of intellectual property rights.
- 13.1 Claims by the customer under paragraph 12.1 shall be excluded if the customer should be responsible for the infringement of the intellectual property rights. Claims on the customer's part shall also be excluded if the infringement of intellectual property rights should be caused by specific demands made by the customer, by a use unforeseeable by the supplier, or if it should be caused by the fact that the performance has been modified by the customer or applied in conjunction with performance not rendered by the supplier.
- 13.2 The customer shall be obliged to use its best endeavours to assist the supplier in its defence of allegations of infringement of intellectual property rights.
- 13.3 Conversely, the customer shall indemnify the supplier from all third-party claims made against the supplier for infringement of intellectual property rights or copyright if the infringement should be the result of an express direction by the customer to the supplier or if the customer should modify performance or integrate the same into a third party's system.
- 14 Export controls**
- 14.1 In the light of American and other export control regulations, particularly European and German regulations) the customer undertakes to obtain the written consent of the supplier and all necessary export licences and/or other documents at its own expense before exporting products that it has received from the supplier. The customer gives the supplier an undertaking that it will observe all export control regulations applicable in this respect.
- 14.2 The customer undertakes not to directly or indirectly sell, export, re-export, deliver or otherwise transfer such products to persons, undertakings or countries in breach of American or other laws and regulations (particularly of European and German origin). The customer undertakes to inform all recipients of such products of the need to observe such laws and regulations. Refusal of an export licence shall not entitle the customer to rescind the contract or claim damages.
- 15 Venue; law applicable; saving clause**
- 15.1 The customer must not assign the rights and obligations under the contract in existence with the supplier to a third party without the supplier's prior written consent.
- 15.2 The venue for all disputes between the supplier and the customer shall be the supplier's registered office if the customer is a registered trader, a legal entity governed by public law or a special establishment under public law. However, the supplier shall also be entitled to sue the customer at the customer's registered office. Unless otherwise agreed between the supplier and the customer the place of performance shall be the supplier's registered office in Altenkunstadt.
- 15.3 The laws of the Federal Republic of Germany shall have exclusive application over all legal relationships between the customer and the supplier. The application of the UN Convention on the International Sale of Goods of 11 April 1980 is excluded.
- 15.4 If a provision of these general terms of business should be or become invalid, incapable of implementation or if it should contain a loophole, the validity of the remaining provisions shall not be affected thereby. The provision that is invalid, incapable of implementation or missing shall be replaced by such provision as the parties would reasonably have agreed if they had been aware that it was invalid or incapable of implementation or that it contained a loophole.