

General terms and conditions for deliveries and services of Nippon Oil Pump Co., Ltd. German branch¹

I. Scope

1. Our deliveries and services resulting from contracts with entrepreneurs as defined by Sec. 14 of the German Civil Code, with public legal entities, or with special funds under public law are exclusively provided based on these terms and conditions. These are part of all contracts we conclude with our clients (hereinafter known as %clients+ or %customers+) in relation to deliveries and services offered by us. They also apply for future deliveries, services or offers made to the client, even if they are not separately agreed on again.
2. Conflicting or differing general terms and conditions of the client are invalid, even if they are not specifically rejected. If we refer to a letter containing or referencing the client's or a third party's terms and conditions, this does not imply we consent to those general terms and conditions. We hereby reject customer counter-confirmations referring to its general terms and conditions of business and purchase. These are only considered valid if they have been recognised by us in writing.

II. Offer and contract conclusion, quotation documents

1. Our offers are subject to change, unless they are expressly marked as binding, or contain a certain acceptance deadline. If our no-obligation offer is accepted, a contract is concluded, unless this is immediately rejected by us.
2. If the client's order is an offer as defined by Sec. 145 of the German Civil Code, we can accept this within 2 weeks of receipt, unless the customer has set a shorter acceptance period in writing. The offer is only deemed as accepted once an order confirmation has been sent, the item is delivered or the service commences.
3. All agreements made between us and the customer in relation to the mutual contractual rights and duties, and contract execution, are stated in writing in our order confirmation or the contractual deed. The same applies for any guarantees or sub-agreements. Verbal promises made by us before contract conclusion are not legally binding.
4. Additions and amendments to the agreements, including these General Terms and Conditions, must be made in writing in order to be deemed valid. With the exception of our managing directors or authorised representatives (like the permanent representative of the German branch), our staffs are not entitled to make verbal agreements which differ from the order confirmation or written contract. Faxes and email are considered written form; other telecommunication formats are not.
5. Our quality details relating to the delivery or service, as well as our diagrams thereof (e.g. drawings, illustrations) are only approximate, unless useability for the contractual purpose requires them to match exactly. They are not guaranteed quality-related agreements, but rather descriptions or labels of the delivery or service.
6. We reserve the proprietary rights and copyrights to all quotes and costings submitted by us, as well as diagrams, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the customer. The customer must not make these items or their content accessible to third parties, publish them, use them themselves or through third parties, or reproduce them without our express consent. At our request, the customer must return all items to us and destroy any copies thereof if they are no longer needed for conventional business processes, or if negotiations do not result in a contract.

III. Prices, minimum order value, expenses for service modifications, assembly costs, price change

1. Our prices apply for the services and deliveries listed in the order confirmations. Additional or special services are charged separately. Unless otherwise agreed, the prices are considered %ex works in Witten+plus packaging and the legal VAT. Export deliveries are exclusive of

customs duties, fees and other public charges. The legal VAT valid on the invoice date is shown separately on the invoice. If the customer asks for the goods to be sent, the transport costs are charged extra.

2. Expenses incurred as a result of changes made to the type or scope of the delivery/service at the purchaser's request after our order confirmation/contract conclusion are charged in addition to the agreed purchase price.
3. Expenses incurred by fulfilling official requirements that come into force after our order confirmation/contract conclusion are also charged in addition to the agreed purchase price.
4. Unless otherwise agreed, assembly costs are charged separately.
5. For domestic order values under EUR 50.00 and international transactions less than EUR 500.00 we charge a minimum volume surcharge of EUR 15.00.
6. If deliveries or services are - in compliance with our individual contractual stipulations - not provided by us within two (2) months after the conclusion of this contract, we reserve the right to adjust our prices due to factually occurred cost increases that are beyond our control and were not foreseeable for us at the time of the conclusion of this contract. The respective ex-post adjustment of our prices shall not lead to an increase of our original profit margin arising out of this contractual relationship. The respective factually occurred cost increases must be appropriately and sufficiently proven to you in written form (e.g. by presenting underlying invoices and/or presenting the intermediate development of underlying price indexes) prior to an adjustment of the previously agreed purchase price.

IV. Delivery and service time, impediment to performance, partial delivery

1. The delivery/service time stated by us is only approximate, unless a binding delivery/service time has been agreed on or expressly guaranteed by us in writing as being binding. Insofar as shipment has been agreed on, the delivery periods and dates refer to the time of handover to the shipping company, freight forwarder or other parties otherwise hired for transportation purposes.
2. Irrespective of our rights resulting from customer defaults, we can ask the customer to extend delivery or service times or postpone delivery and service dates by the duration for which the customer fails to comply with its contractual obligations.
3. The delivery period/deadline is extended by the duration of a temporary performance impediment beyond our control. This also applies if said performance impediment occurs at our supplier's end or its subcontractor's end. We will immediately inform the customer of the reason and expected duration of the delay. If the impediment is not expected to end within an appropriate time frame, we and the customer can partially or fully withdraw from the contract. However, the customer's right of withdrawal requires that the customer first set us a reasonable deadline to render the service, and that this lapse unsuccessfully. Deadlines do not need to be set in the cases stated in Sec. 323 Para. 2 of the German Civil Code. The customer's rights in case of impossibility of the performance as set out in Sec. 275 German Civil Code remain unaffected.
4. Instead of one single delivery/service, we are entitled to make partial deliveries for deliveries/services consisting of multiple components within the delivery/service period, but only if
 - the partial delivery can be used by the customer for the contractual purpose,
 - delivery of the rest of the ordered items is guaranteed, and
 - the customer does not incur any significant additional expenses or costs from this (unless we declare ourselves willing to bear these costs).

V. Place of performance, shipping and transfer of risk for deliveries, default of acceptance, acceptance tests

1. Unless otherwise stated, the place of performance for all obligations resulting from the contractual relationship is Witten. If we are also responsible for installation/assembly, the place of performance is the place of installation.
2. Deliveries are made ~~at~~ works+

3. We choose the type of packaging, dispatch route, and mode of transport at our own discretion.
4. Risk is transferred to the customer no later than when the item is handed over to the postal service or the transporter, whereby the start of the loading process constitutes the definitive time. In case of a retardation of a handover due to circumstances that the customer is responsible for, the transfer of risk to the customer takes place when the goods have been made ready for dispatch and the customer has been notified by us respectively.
5. If the customer defaults with acceptance or culpably breaches other participation duties, we are entitled to demand compensation for any resulting damages, including any additional expense. This is subject to further claims or rights. Insofar as the requirements in clause 1 of this section are met, the risk of accidental loss or deterioration in the purchased item is transferred to the customer at the time the item is deemed ready for shipment. In the event of defaults in acceptance, our liability is limited as per point X of these General Terms and Conditions.
6. The customer bears storage costs after the risk has been transferred. If we store items, the storage costs total 0.25% of the invoice amount for the stored items per completed week, subject to the assertion and proof of further or fewer storage costs.
7. We have taken out transport insurance for all deliveries, making us exempt from forwarding insurance. The supplier must inform the shipping company or freight forwarder of this.
8. Insofar as an acceptance test must be conducted, the purchased item is deemed as accepted if
 - the delivery and - insofar as we are also responsible for installation/assembly . the installation/assembly has been completed,
 - we have advised the customer of this, citing notional acceptance as per point V. 8., and asked it to conduct an acceptance test,
 - the delivery or installation/assembly took place 12 working days prior, or the customer has started using the purchased item (e.g. started up operations using the delivered system), and in this case, delivery or installation/assembly took place 6 working days prior, and
 - the customer fails to conduct an acceptance test within this time frame for a reason other than a reported defect which makes it impossible or significantly difficult to use the purchased item.

VI. Default in performance by the customer

1. The customer is obliged to compensate damages resulting from customer's breaches of duty on the grounds of German Civil Law. We are entitled to charge a flat rate for damages, whereby the compensation amount is determined by the order value. In the event of a lump-sum charge, 5% of the delivery's order value can be charged as compensation. In the event of partial deliveries, the compensation totals 5% of the partial delivery's value. We reserve the right to claim higher damages.
2. If the client disputes the compensation amount, it must prove that no damages or significantly less damages were caused.

VII. Payment conditions, default, offsetting, withholding right

1. Unless otherwise agreed, orders must be paid within 30 business days from the date of the invoice.
2. For the rest, the legal payment due-date rules apply.
3. If the customer does not pay by the due date and the transaction is a mutual commercial transaction, the outstanding amounts incur an interest of 5 % p.a. starting from the first overdue day; this does not affect the right to claim higher interest or further damages in the event of default.
4. We agree to charge a reminder fee of 4.00 EUR for each reminder sent by us, excluding any reminder which causes the default, unless the customer proves that the damages suffered by us are much less than the aforementioned flat rate.
5. The default interest is 9 % above the German basic rate of interest, subject to further damage claims being brought forward.

6. The customer is only entitled to offset claims if its counterclaims are legally established or undisputed by us.
7. The customer cannot refuse a service or exercise withholding rights, unless its counterclaims are legally established or undisputed.
8. We are entitled to only provide outstanding deliveries or services in return for advance payment or a security deposit if we become aware of circumstances indicating a significant deterioration in the customer's credit rating, and which imply a risk that the customer may not pay our outstanding claims resulting from the contractual relationship (including from other individual orders for which the same framework contract applies).
9. All offsetting requirements are based on the time our claim arises, not its payment due date. Offsetting can be performed as a cash payment, payment by bill of exchange, cheque or other payment. In the event of current account relationships, the offsetting agreement covers the balance. If the claims or liabilities are due on different days, the value date is used.

VIII. Non-performance - Deadlines, customer withdrawal

1. In the event of non-performances affecting our contractual obligations (e.g. default, poor performance, breach of proprietary and auxiliary obligations, infeasibility, partial non-fulfilment), the deadline to be set by the customer by law must be done so in writing in order to be valid. Point II.4. last clause of these General Terms and Conditions applies with regard to written form.
2. If the non-performance is not our fault, the customer is not entitled to withdraw from the contract . except in the cases expressly stated in these conditions. This does not affect the legal right of withdrawal in the event of defects.
3. In the event of non-performance caused by us, the customer is entitled to withdraw as per the law. The deadline to be set by him in accordance with the legal regulations must also be done so in writing. Withdrawal must be declared in writing. Point II.4. last clause of these General Terms and Conditions applies with regard to written form.
4. In the event of partial non-fulfilment caused by us, the customer is entitled, as per the requirements in point VIII.3, to withdraw from the contract in relation to the partial services/deliveries not yet provided. It can only withdraw from the entire contract if the partial services/deliveries already made are of no interest to it.

IX. Defects and warranties

1. The statute of limitations for claims of the customer in context to defects which are not subject to the deadline in Sec. 438 Para. 1 no. 2 or Sec. 634 Para. 1 no. 2 of the German Civil Code is 1 year from the beginning of the regulatory limitation period. This does not affect the provisions in Sec. 203 et seq. German Civil Code. The regulation of this point 1 is not applicable for compensation claims.
2. In the event of a commercial transaction as per Sec. 373 et seq. German Commercial Code, the customer's warranty rights require that the customer duly comply with its duties of inspection and reporting as per Sec. 377 of the German Commercial Code: The delivered items must be carefully inspected immediately after delivery to the customer or the third parties appointed by it. They are considered as having been approved, unless we receive a written complaint relating to obvious defects, or other defects detected during an immediate, careful inspection, within 7 working days of delivery, or otherwise within 7 working days of the defect being detected, or any earlier time when the defect became apparent to the customer during normal use of the item, without further inspection.
3. If there is a purchase agreement, which does not constitute a commercial transaction (e.g. because the purchaser is a non-trader), the customer must report any obvious defects within 14 days after delivery to us. If he does not, obvious defects are considered as approved.
4. The aforementioned duties of inspection and reporting also apply if a defect becomes known as part of a supplier's recourse (Sec. 478 Para. 6 German Civil Code).
5. The defect report must be made in writing. Point II.4. last clause of these General Terms and Conditions applies with regards to written form.

6. Insofar as there is a defect in the delivered item or service, we are entitled to choose, within an appropriate time frame, to provide a supplementary performance in the form of repairs or replacement delivery, or create a new product. The customer does not need to set a time limit for supplementary performance, insofar as such a time limit is unnecessary according to law. In case of supplementary performance we are obligated to bear all necessary expenses, particularly transport, commuting, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a location other than the legal place of performance.
7. If we comply with our supplementary performance obligation by subsequently delivering flawless goods, we are not obliged to dismantle any original flawless items and fit the new, flawless items. Unless otherwise agreed on in writing, this is the customer's responsibility. We do not bear any dismantling or fitting costs, unless we are responsible for the original, defective delivery, in which case, we are entitled to dismantle the defective goods and fit the new, flawless goods.
8. When a new, flawless item is delivered, the purchaser is obliged to return/reimburse us for the benefits gained as per Sec. 346 of the German Civil Code. The same applies if a new product is manufactured.
9. If the supplementary performance fails, the customer's right to supplementary performance expires. It is similarly not entitled to self-help. It can choose to either withdraw from the contract or demand a reduction, though the right of withdrawal cannot be exercised for construction services.
10. Repair work does not involve recommencement of the statute of limitations, but rather only a suspension thereof, as per Sec. 203 of the German Civil Code.
11. There is no warranty if original parts of the items delivered or made by us are replaced by parts originating non from us, insofar as the defect has been caused by these foreign parts. The same applies if supplementary work, repairs or changes to items delivered or manufactured by us have been performed by third parties without our prior written consent, insofar as the defects were caused by this work. In any case, the customer must bear the additional costs incurred as a result of the changes. For the avoidance of doubt, a warranty under German Civil Law shall remain unaffected for other defects that have been present when the respective transfer of risk took place.
12. The regulations modifying the warranty in the event of a supplier recourse (Sec. 478, 479 of the German Civil Code) are not affected by the above provisions.
13. Unless otherwise agreed, we do not provide the customer with any guarantees in the legal meaning of the word. This does not affect manufacturer guarantees, if any.
14. If, in individual cases, it is agreed with the customer that used items are to be delivered, this is done without any warranty. The same applies for items expressly sold as ~~selected material~~.

X. Liability limitations

1. Insofar as we are at fault, our liability for compensation, regardless of the legal grounds, particularly due to impossibility, default, defective or incorrect delivery, contractual breach, breach of obligations during contractual negotiations, and unauthorised actions, is limited as per this point X.
2. We are not liable in the event of minor negligence by our boards and committees, legal representatives, employees or other assistants, insofar as this does not constitute a breach of major contractual duties. Major contractual duties are the obligation to promptly deliver and install/assemble the item free of any significant defects, and the duties of consultancy, protection and care enabling the customer to use the item as per the contract, or which seek to protect persons or the customer's ownership from major damage.
3. Insofar as we are liable for compensation, this is limited to damages we foresaw as possible consequences of a contractual breach at the time of contract conclusion, or which we could have foreseen if due care had been exercised. Indirect damages and secondary damages resulting from item defects can only be compensated if they are to be typically expected from correct item use.
4. In the event of liability for minor negligence, our duty to compensate for material damages and resulting further financial losses is limited to an amount of 2,200,000.00 EUR

(corresponding to the current ceiling amount for our product liability or liability insurance), even if this involves a breach of major contractual duties.

5. The existing liability disclaimers and limitations apply similarly for our boards and committees, legal representatives, employees and other assistants, as well as for their personal compensation liability.
6. The restrictions in this point X. do not apply to our liability for deliberate actions, guaranteed quality features, physical injury, harm to health or breaches of the product liability act.
7. Insofar as we provide technical information or offer advice, and this information or advice is not part of the contractually agreed service, this is provided free of charge, under exclusion of any liability.

XI. Proprietary rights

1. According to this point XI., we vouch for the fact that the delivery item is free of industrial proprietary rights or copyrights of third-parties. Each contractual party will immediately advise the other in writing if any claims are raised against them for breach of such rights.
2. In the event the delivery item breaches an industrial proprietary right or a copyright of third-parties, we will choose to either modify or replace the delivery item, at our expense, so that no more third-party rights are breached but the delivery item still fulfils the contractually agreed purposes, or grant the customer a usage right by virtue of a licensing agreement. If we are unable to do this within a reasonable time frame, the customer is entitled to withdraw from the contract or reduce the purchase price appropriately. Any customer compensation claims are governed by the restrictions in point X. of these General Terms and Conditions.
3. In the event of legal breaches caused by products delivered by us but made by other manufacturers, we will choose to either assert our claims against the manufacturer and upstream suppliers on behalf of the customer, or assign them to the customer. Claims against us only exist in the cases mentioned here in this point XI., if judicial assertion of the aforementioned claims against the manufacturer and upstream supplier has been unsuccessful or is futile, e.g. due to bankruptcy.

XII. Retention of title

1. We retain title to the goods until receipt of all payments in full. In case of breach of contract by the customer including, without limitation, default in payment, we are entitled to take possession of the goods.
2. The customer shall handle the goods with due care and to the extent necessary, service and maintain the goods.
3. As long as the purchase price has not been completely paid, the customer shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.
4. The customer may resell goods subject to the above retention of title only in the course of his regular business. For this case, the customer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us. Notwithstanding our right to claim direct payment the purchaser shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the customer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.
5. Insofar as the above securities exceed the secured claim by more than 10 %, we are obligated, upon our election, to release such securities upon the customer's request.

XIII. Non-transferability of contractual rights, onward delivery (export)

1. The customer may not transfer its delivery entitlement to third parties without our express consent. The same applies for the entitlement to manufacture the promised product. The customer can, in individual cases, raise a plea of estoppel against assertion of assignment prohibition.

2. Items not expressly sold for export must not be taken outside the Federal Republic of Germany if unprocessed.
3. Unprocessed items sold for export must not be kept within the Federal Republic of Germany, delivered there, or delivered or taken to a destination country other than that stated in the order. These items must also not be processed in Germany.
4. At our request, the client is obliged to prove the items whereabouts.
5. The client is obliged to secure the compliance with the above stated provisions even when entering into e.g. purchase agreements with other downstream purchasers. If the client or one of its downstream purchasers breaches the above stated provisions, the client may be held liable for our damages (e.g. lost profits). If the downstream purchaser breaches its stipulation, the customer is obliged to assign his respective claims for damages to us.

XIV. Jurisdiction, applicable law, severability clause

1. Non-exclusive places of venue for all our disputes arising directly or indirectly from the contractual relationship are the local circuit of our business location in Germany and that of the business location of the customer.
2. Our business location in Germany is the sole place of jurisdiction for claims raised against us. Mandatory legal provisions relating to exclusive places of jurisdiction are not affected by this provision.
3. Only Federal German law applies for the contract and execution thereof. The UN convention on contracts for the international sale of goods does not apply.
4. If individual provisions of this contract, including these General Terms and Conditions for deliveries and services, are or become invalid, this shall not affect the validity of the remaining provisions. The fully or partially invalid provision shall, to the extent legally permissible, be deemed replaced by that valid and enforceable provision whose economic purpose comes as close as possible to the provision replaced.

ⁱ The General terms and conditions for deliveries and services shall be applied to all contracts of Nippon Oil Pump Co., Ltd. German branch.