

Terms and conditions

Except as agreed in writing, the following terms and conditions apply without exception to all sales by Novar GmbH, Johannes-Mauthe-Str. 14, 72458 Albstadt, Germany ("Novar") to Buyer.

1 SOLE TERMS

Novar's sale is expressly limited to the terms herein. Any additional or different terms or conditions on Buyer's purchase order or any other instrument, agreement or understanding are deemed to be material alterations and are rejected and not binding upon Novar. Novar's acceptance of Buyer's purchase order is expressly conditional upon Buyer's assent to the terms and conditions contained herein in their entirety. Buyer's acceptance of delivery from Novar constitutes Buyer's acceptance of these terms and conditions in their entirety.

2 QUOTE/PRICES

- 2.1** Information in any quotations and in attached drawings and illustrations about the goods, their measurements and weights are only approximate unless they are expressly stated as being binding.
- 2.2** Content and scope of the supply are determined exclusively on the basis of Novar's written quotation and order confirmation.
- 2.3** Novar's quotations are subject to change until accepted by Buyer. If an offer is stated as being binding, it shall be binding for 3 months from its date of issue.
- 2.4** Novar reserves the right to make technical changes to the construction, form and material of goods – also during the delivery time – providing these changes are reasonably acceptable to Buyer. If the parties agree to changes to the goods or services to be supplied, Novar is entitled to claim additional costs with immediate effect and is not obliged to perform the contract until Buyer agrees to make such payments.
- 2.5** Buyer must request shipment of the entire quantity of goods ordered within 12 months from date of order; otherwise, Novar standard prices at time of shipment may, at Novar's option, apply to those quantities actually delivered, even if already invoiced.
- 2.6** Unless specifically agreed in writing, prices for goods do not include the cost of packaging, or services such as installation, start-up, commissioning or maintenance. If Novar has expressly agreed to ship goods, shipment costs will be as per the quote or, if none is mentioned, per the relevant catalogue.
- 2.7** All tooling, designs, drawings and other intellectual property produced or delivered hereunder are owned by Novar.
- 2.8** Minimum order value is 50,00 €. If your order value is below the minimum of 50,00 €, Novar will be entitled to charge a handling fee of 25,00 € per order.

3 PAYMENT

- 3.1** Unless otherwise expressly agreed in writing, all payments are to be in EUROS and are due net in Novar's account within 30 days from date of invoice.
- 3.2** All bank charges in connection with any payment shall be paid by Buyer. Cheques and/or bills of exchange will only be accepted in payment's stead and in accordance with a special written agreement. They are deemed as payment only when they have been cashed in.
- 3.3** Novar at all times reserves the right to evaluate Buyer's credit standing and if Buyer fails to qualify for credit under Novar's criteria, Novar may modify or withdraw credit terms without notice and require guarantees, security or payment in advance for further deliveries of goods. If these are not provided within a reasonable period following a notice, Novar may rescind the contract and/or claim costs, losses or damages.
- 3.4** Invoices remaining unpaid after their due date will be subject to an interest charge of 8 percentage points above the respective base rate published by the German Federal Bank per year, unless Buyer is not responsible for the default. Buyer will pay all costs necessary for collection of unpaid amounts, including legal fees, unless Buyer is not responsible for the default.

4 DELIVERY, EXAMINATION, RETENTION OF TITLE, COOPERATION

- 4.1** All delivery dates are estimates unless agreed otherwise by Novar in writing.
- If an order does not specify a preferred delivery date or if such information in respect of products is not clearly stated, Novar will stipulate the earliest reasonably practicable date for delivery depending on lead times for the product. If an order is placed after Novar's close of business on a working day, the time period for delivery will be calculated from the next working day.
- In case of a conflict between order and order confirmation of Novar, the order confirmation prevails.
- 4.2** Novar may make deliveries under any order in one or more shipments, to the extent that this is reasonably acceptable to Buyer, and may issue separate invoices.
- 4.3** Any fixed dates for deliveries agreed in writing are conditional upon the timely provision of all documents by Buyer, any required authorisations and approvals, in particular of plans, and the provision of all necessary information. If these requirements are not fulfilled in a timely manner, the fixed dates will be extended accordingly. This does not apply if Novar is responsible for the delay.
- 4.4** Novar may demand an appropriate extension of the delivery date in the event of subsequent changes agreed.
- 4.5** Delivery terms for goods are EX Works (Incoterms 2010) Duisburg with all risk of loss or damage to goods passing to Buyer upon delivery to carrier.

- 4.6** Buyer must inspect all goods upon delivery without undue delay and must report:

- a)** obvious defects, transport damages, discrepancies and shortages without undue delay, and in no event later than 10 days after delivery,
- b)** hidden defects without undue delay, and in no event later than 10 days after detection in writing to Novar. Otherwise all goods will be deemed delivered and accepted, unless Novar fraudulently neglected to disclose such faults. Buyer will return to Novar any goods that are rejected at his own expense. In the event Buyer refuses to accept delivery, Buyer shall be liable for increased costs incurred by Novar in accordance with section 7.3.

- 4.7** Novar shall retain title of all goods delivered by Novar until payment has been made in full. In the event Buyer has credit with Novar, retention of title shall serve as security for any balance due to Novar.

- 4.8** Until title of the goods is transferred to Buyer, Buyer shall treat the goods with care; in particular it shall insure them sufficiently against fire, water and theft at reinstatement value at its own cost.

- 4.9** In the event of seizure or any other measure taken by third parties in relation to the goods, Buyer shall notify Novar in writing without undue delay so that Novar can initiate legal proceedings pursuant to § 771 of the German Code of Civil Procedure in order to prevent execution of any court order. If the third party is unable to reimburse the costs incurred in court or out of court of a claim pursuant to § 771 of the German Code of Civil Procedure, Buyer is liable for the damages incurred hereby.

- 4.10** Any processing of or alteration to the goods carried out by Buyer shall always be carried out for Novar. If the goods are processed with other items that do not belong to Novar, Novar shall acquire co-ownership of the new item in the ratio of the value of the object delivered to the other processed items at the time of processing.

- 4.11** If the goods are irreversibly mixed with other items that do not belong to Novar, Novar shall acquire co-ownership of the new item in the ratio of the value of the object delivered to the other mixed items at the time of mixing. If the mixing process takes place in such a way that Buyer's item must be regarded as the principal item, the parties shall be deemed to have agreed that Buyer shall transfer shared title to Novar pro rata.

- 4.12** Should Buyer sell the goods delivered – whether processed or not – in due course of business, it hereby assigns any claims from selling the goods with all ancillary rights vis-à-vis its customer to Novar.

- 4.13** On good cause Buyer is obliged, if requested by Novar, to inform Novar of any assignment to a third-party purchaser and to give Novar all information required for the assertion of its rights and to hand over any documents.

- 4.14** Should the realisable value of Novar's security exceed the debt claim to be secured by more than 10%, Novar shall release part of the security – at its discretion – at the request of Buyer.

- 4.15** Buyer shall make available in time all equipment and grant access to all facilities which Novar may require to perform any services.

5 TAXES

The amount of any and all applicable taxes will be added to the price and paid by Buyer, unless Buyer has provided Novar with exemption certificates acceptable to the taxing authorities.

6 FORCE MAJEURE, DELAY

- 6.1** Novar is not liable for any delay in production or delivery of goods if due to a force majeure event, which includes, among other things, shortages of or inability to obtain materials or components, or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any government that would limit Novar's ability to perform, fire, earthquakes, floods, severe weather conditions, or any other acts of God, pandemics, epidemics, pandemics, or other regional medical crises, labour strikes or lockouts, riots, strife, insurrection, civil disobedience, armed conflict, terrorism or war (or imminent threat of same), or any other cause whatsoever beyond Novar's reasonable control.

- 6.2** If the force majeure event continues for longer than 90 days, either party may terminate Buyer's purchase order. If Buyer terminates the order, Buyer will pay Novar for work performed prior to termination and all reasonable expenses incurred by Novar prior to termination. In the event of delays in delivery or performance caused by force majeure or Buyer, the date of delivery or performance shall be extended by the period of time Novar is actually delayed or as mutually agreed. Any claims for damages, costs or losses howsoever construed shall be excluded.

- 6.3** If, for reasons other than the foregoing, Novar should default or delay or not deliver goods, Buyer's sole remedy against Novar is an option to cancel Buyer's purchase order through prior written notice to Novar. In as far as Buyer incurs damages due to a delivery delay, Novar's liability is limited to 0.5% of the order value of the delayed delivery per week up to a maximum amount of 5% of the order value of the delayed delivery. Buyer is only entitled to claim damages in lieu of performance in accordance with section 11 (limitation of liability).

7 TERMINATION, RETURN OF GOODS

- 7.1** Buyer may not terminate or cancel a purchase order without Novar's prior written consent. Goods scheduled for shipment within 30 days cannot be rescheduled. Goods scheduled for shipment between 30 and 60 days may be rescheduled with Novar's prior written consent and if rescheduled beyond 60 days that quantity may not be further rescheduled. Buyer is nonetheless liable for termination charges, which may include:

- a)** a price adjustment based on the quantity of goods delivered,
- b)** all costs, direct and indirect, incurred and committed for Buyer's terminated purchase order,
- c)** the full cost of all unique materials required for custom goods, and
- d)** a pro-rata compensation covering the prorated expenses and anticipated profits consistent with industry standards.

- 7.2** Novar may terminate Buyer's purchase order in whole or in part upon Buyer's breach of these terms and conditions or Buyer's bankruptcy, insolvency, dissolution or receivership proceedings without any further liability.

- 7.3** Returns of goods are only accepted in their original packed and sealed condition within 6 months after shipment. Software, customised products and products in opened packaging, lacquered and non-reusable parts cannot be returned. Goods can only be returned with an authorisation number (RMA) obtained from Novar in advance of shipment to Novar. The RMA is specific to the relevant goods and quantity. Novar reserves the right to:

- a)** reject any return of other goods than specific to the RMA, or
- b)** charge an additional €25 per return. In case of accepted returns, the purchase price shall be repaid with a deduction of up to 20% for processing, testing, administration and other overheads. The minimum charge for returns is €25 per invoice. This does not affect the Purchaser's rights under the product warranty. If the Purchaser withdraws from the Contract and is not entitled to do so, or if the Purchaser refuses to accept the delivery and is unjustified in doing so, the Seller is entitled to 15% of the agreed price as liquidated damages, unless the Purchaser proves that the Seller has not suffered any damage or to a lesser extent. Reserves the right to claim further damages.

8 INFRINGEMENT INDEMNIFICATION

- 8.1** Novar agrees to:

- a)** defend or settle any claim, suit or proceeding brought against Buyer based solely upon a claim that any goods manufactured and provided solely by Novar hereunder directly infringe any third-party German patent, copyright or mask work rights, and
- b)** pay costs and damages finally awarded to the third party, provided that: (A) Novar is notified promptly in writing of such claim, (B) Novar is provided sole control of such defence or settlement using counsel of Novar's choice, and (C) Buyer provides Novar with all available information and assistance. Because Novar has exclusive control over resolving infringement claims hereunder, in no event will Novar be liable for Buyer's legal fees, if any.

- 8.2** Novar shall not be responsible for any settlement or compromise of any such third-party claim made without Novar's written consent. Novar has no obligation and this Section 8 will not apply to any claim of infringement of any intellectual property right of a third party in the case of:

- a)** goods not in Novar's catalogue or goods developed pursuant to Buyer's direction, design, process, or specification,
- b)** the combination of any goods with other elements if such infringement could have been avoided but for such combination,
- c)** goods that have been modified if such infringement would have been avoided by the unmodified goods,
- d)** goods not used for their ordinary purpose, or
- e)** software if such software is other than the latest version of the software released by Novar and provided to Buyer. Buyer agrees to defend, indemnify and hold harmless Novar from and against any claims, suits or proceedings whatsoever arising from such exclusions identified in this Section 8.2, unless this is not caused by Buyer's failure.

- 8.3** At any time after a claim has been made or Novar believes is likely to be made, or a court of competent jurisdiction enters an injunction from which no appeal can be taken, Novar has at its option the discretion to:

- a)** procure for Buyer the right to continue using such goods,
- b)** replace or modify such goods in a way that it does not further infringe any third-party intellectual property rights and without affecting the functionality of said goods. In the event Novar fails to do so within a reasonable time limit to be set by Buyer, Novar shall accept the return of such goods and refund the purchase price less 20% annual depreciation from shipment date.

- 8.4** The foregoing states Buyer's exclusive remedy for any actual or alleged infringement of intellectual property rights. Buyer is only entitled to claim damages subject to section 11 (limitation of liability).

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9 SOFTWARE

- 9.1** The use of software, if provided separately or installed on a good supplied, is governed by the following terms unless a software license agreement is included with such software.
- 9.2** Subject to Buyer's compliance with these terms and conditions, Novar grants to Buyer a personal, limited, non-exclusive license to use the object code of the software solely for Buyer's internal purposes. The license is limited to such kind of goods as are specified on Buyer's purchase order, quotation or acknowledgement. No other use is permitted.
- 9.3** Novar retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes, without limitation, all rights in patents, copyrights, trademarks and trade secrets.
- 9.4** Buyer shall not attempt any transfer without prior written consent of Novar, sublicense or redistribution of the software except as expressly permitted herein. Buyer is entitled to copy the software in as far as necessary for the contractual purpose. Buyer is entitled to make back-up copies in as far as necessary. Furthermore, Buyer shall not disclose, distribute or display any such software, or otherwise make it available to others (except as Novar authorises in writing) or allow any unauthorised use of the software. Buyer is only entitled to reverse compile the software within the scope of § 69e UrhG. Buyer is only entitled to modify, upgrade or alter the software in any other way within the scope of § 69c UrhG (German copyright law).
- 9.5** Novar may terminate this license if Buyer breaches fundamental provisions under these terms and conditions. If the software is delivered with a good, Buyer may only transfer its license of the software to a third party in conjunction with the sale by Buyer of the good on which the software is installed.
- 9.6** Customised software will be based on the current version of software, unless agreed otherwise. Customised software is generally excluded from support and updates by Novar unless otherwise agreed in writing by Novar.
- ## 10 WARRANTY
- 10.1** To the extent permitted by law, Novar shall only be liable in accordance with the following warranty conditions, which replace any other warranties or guarantees. Any other claim shall be excluded. In particular (unless otherwise agreed in writing) Novar does not warrant the fitness of the product for any specific use which would not be the use for which the product was designed by its manufacturer.
- 10.2** Except as otherwise expressly provided herein, Novar warrants goods in all material respects to be free of defective materials and faulty workmanship and as conforming to applicable specifications and/or drawings. Unless otherwise agreed in writing commencing with Novar's date of shipment, the warranty period shall run for 24 months. Warranty for spare parts is limited to 12 months from delivery.
- 10.3** Non-complying goods returned to Novar in accordance with Section 4.6 will be repaired or replaced at Novar's option, and return-shipped lowest cost, transportation prepaid. The costs of transportation to Novar have to be borne by Buyer. In the event Novar fails to repair or replace the non-complying good within a reasonable time limit set by Buyer, Novar shall accept the return of such goods and refund the purchase price less 20% annual depreciation from shipment date. The foregoing states Buyer's exclusive remedy in case of defects. Buyer is only entitled to claim damages subject to section 11 (limitation of liability).
- 10.4** If so requested by Novar, Buyer shall give Novar sufficient opportunity to verify any fault, in particular to provide faulty goods and their packaging to Novar for inspection. If Buyer refuses, Novar shall not be liable for such defects. No goods will be accepted for return without an authorisation number obtained in advance of shipment to Novar.
- 10.5** Goods subject to wear and tear or burnout through usage shall not be deemed defective because of such wear and tear or burnout. No warranty shall apply if the defect or damage was caused by or related to installation, combination with other parts and/or products, modification to or repair of any goods other than by Novar, or resulted from Buyer's acts, omissions, misuse or negligence.
- 10.6** Repaired or replaced goods shall be warranted for the remainder of the unused warranty term or for 90 days from shipment, whichever is longer.
- 10.7** It is Buyer's responsibility to ensure that the goods are fit for the application in which they are used.
- 10.8** Software, if supplied separately or installed on goods supplied and warranted by Novar, will be furnished on a medium that is free of defect in materials or workmanship under normal use for as long as the hardware and/or system is under warranty. During this period, Buyer has the rights listed in section 10.3 with regard to any defects of the software. Unless stipulated otherwise in a separate software license agreement, no further warranty is given in respect of software.
- 10.9** If Novar provides any services to Buyer, including but not limited to training or assistance with configuration and installation of the goods, Novar shall provide such services in accordance with normal industry practice at such rates as may be specified by Novar in its price list. In case of non-conformance which Novar has been notified of correctly and promptly, Novar will repeat services and/or correct accordingly. To the extent permitted by law, Novar accepts no liability to Buyer arising out of the provision of such services.

- 10.10** Novar does not represent or warrant that the goods may not be compromised or circumvented or that the goods will prevent any personal injury or property loss, burglary, robbery, fire or otherwise, or that the goods will in all cases provide adequate warning or protection. Buyer understands that a properly installed and maintained alarm may only reduce the risk of burglary, robbery, fire or other events occurring without providing an alarm, but it is not an insurance or guarantee that such will not occur or that there will be no personal injury or property loss as a result.

- 10.11** These warranties are for the benefit of Buyer only and are not assignable or transferable.

11 LIMITATION OF LIABILITY

- 11.1** Novar is liable for intent and gross negligence on its part, on the part of its legal representatives and vicarious agents. If Novar has not acted intentionally, Novar's liability is restricted to typical, foreseeable damage.
- 11.2** Novar shall also be liable in the event of negligent injury to life, body and health caused by Novar, its legal representatives or vicarious agents and in the event of wilful failure to disclose a defect. Where a guarantee is provided by Novar, then the extent of Novar's liability is to be determined pursuant to the guarantee declaration.
- 11.3** Novar shall also be liable for the negligent failure to comply with any of its obligations that are fundamental to the purpose of the agreement. If Novar has not acted intentionally, Novar's liability is restricted to typical, foreseeable damage.
- 11.4** Additionally Novar shall be liable in cases of mandatory statutory liability, for example pursuant to the Product Liability Act.
- 11.5** Buyer shall indemnify Novar against any claims, damages, losses, costs and expenses incurred by Novar as a result of either claims made against Novar by third parties arising out of the combination or use of the goods with any incompatible ancillary products that may be connected to the goods, or any other matter for which Novar would not be liable to Buyer under these terms and conditions.
- 11.6** Other than stated herein, any liability of Novar is excluded, regardless of the theory of liability, whether based in contract, tort, indemnity or otherwise.
- 11.7** Buyer shall notify and consult with Novar without undue delay and comprehensively if it intends to take legal recourse in accordance with the aforementioned provision. Buyer has to allow Novar to investigate and examine the damages.

12 RECOMMENDATIONS

Any recommendations or assistance provided by Novar concerning the use, design, application or operation of the goods shall not be construed as representations or warranties of any kind, express or implied, and such information is accepted by Buyer at Buyer's own risk and without any obligation or liability to Novar. It is Buyer's sole responsibility to determine the suitability of the goods for use in Buyer's application(s). Other than in cases of statutory obligations the failure by Novar to make recommendations or provide assistance shall not give rise to any liability to Novar.

13 LAWS

- 13.1** Buyer will comply with all applicable laws, regulations and ordinances of any governmental authority in any country having proper jurisdiction, including, without limitation, those laws of the United States or other countries that regulate the import or export of the goods provided by Novar, and shall obtain all necessary import/export licenses in connection with any subsequent import, export, re-export, transfer and use of all goods, technology and software purchased, licensed and received from Novar. Unless otherwise mutually agreed in writing, Buyer agrees that it will not use or permit third parties to use the goods in connection with any activity involving nuclear fission or fusion, any use or handling of any nuclear material, or any nuclear, chemical or biological weapons.
- 13.2** Goods and services delivered by Novar hereunder will be produced and supplied in compliance with all applicable laws and regulations in the Federal Republic of Germany. Buyer confirms that it will ensure that all goods are properly installed and used in accordance with the applicable safety at work laws and regulations, and Buyer will indemnify Novar in respect of any costs, claims, actions or liability arising out of that act, or otherwise arising out of the supply by Buyer or use by others of the goods, unless this is not caused by Buyer's failure.

14 PRECLUSION AGAINST SET-OFF

Buyer is only entitled to set off any amount against any amount due or to become due from Novar to Buyer or its affiliates that is undisputed or final and absolute.

15 WEEE

- 15.1** Prices do not include the costs of recycling goods covered by the European WEEE Directive 2002/96/EC and such costs may be added to the prices quoted.
- 15.2** Unless a charge has been made as per section 15.1 above, if the provisions of the WEEE Directive 2002/96/EC as implemented in any local jurisdiction apply to goods, the financing and organisation of the disposal of waste

electrical and electronic equipment are, with the exception of goods which are B2C as per Novar catalogue, the responsibility of the Buyer who herewith accepts this responsibility, and Buyer will indemnify Novar in respect of all such liabilities. Buyer will handle the collection, processing and recycling of the goods in accordance with all applicable laws and regulations, and shall pass on this obligation to the final user of the goods. Failure by the Buyer to comply with these obligations may lead to the application of criminal sanctions in accordance with local laws and regulations.

16 APPLICABLE LAW

These terms and conditions are subject to the Laws of the Federal Republic of Germany. These terms and conditions are excluded from the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The competent court at the seat of Novar will have exclusive jurisdiction to adjudicate any dispute related to these terms and conditions.

17 INDEMNIFICATION

Buyer shall indemnify Novar for all costs and damages, including legal fees, suffered by Novar as a result of Buyer's culpable actual or threatened breach of these terms and conditions.

18 MISCELLANEOUS

- 18.1** The parties may exchange confidential information during the performance or fulfillment of any supply. All confidential information shall remain the property of the disclosing party and shall be kept confidential by the receiving party for a period of 10 years following the date of disclosure. These obligations shall not apply to information which is:
- publicly known at the time of disclosure or becomes publicly known through no fault of recipient,
 - known to recipient at the time of disclosure through no wrongful act of recipient,
 - received by recipient from a third party without restrictions similar to those in this section, or
 - independently developed by recipient. Each party shall retain ownership of its confidential information, including without limitation all rights in patents, copyrights, trademarks and trade secrets. A recipient of confidential information may not disclose such confidential information without the prior written consent of the disclosing party, provided that Novar may disclose confidential information to its affiliated companies in the sense of §§15ff AktG (company law), and its and their employees, officers, consultants, agents and contractors.
- 18.2** These terms and conditions (including those agreed separately in writing) constitute the entire agreement of Novar and Buyer, superseding all prior agreements or understandings, written or oral, and cannot be amended except by a mutually executed writing.
- 18.3** Buyer may not assign any rights or duties hereunder without Novar's written prior consent. Novar may subcontract its obligations hereunder without Buyer's consent. No representation, warranty, course of dealing or trade usage not contained or expressly set forth herein will be binding on Novar.
- 18.4** Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of these terms and conditions.
- 18.5** No failure by Novar to enforce at any time for any period the provisions hereof shall be construed as a waiver of such provision or of the right of Novar to enforce thereafter each and every provision.
- 18.6** In the event that any provision herein is determined to be illegal, invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected and, in lieu of such provision, a provision as similar in terms as may be legal, valid and enforceable shall be added hereto.
- 18.7** Provisions herein which by their very nature are intended to survive termination, cancellation or completion of supply shall survive such termination, cancellation, or completion.
- 18.8** All stenographic and clerical errors are subject to correction.
- 18.9** These terms and conditions shall confer no benefit on any third party.
- ## 19 LANGUAGE
- The German language version of these terms and conditions will prevail in case of conflict with any translations provided for convenience purposes.

1. March 2016