

thenex's Standard Terms and Conditions of Sale

1. Scope of Application

- (1) These Standard Terms and Conditions of Sale shall apply for all – also future – deliveries and services, save as varied by express agreement accepted in writing by both Parties. The same shall apply to any offer, order acceptance and order acknowledgment.
- (2) In the relationship to the general terms and conditions („Allgemeine Geschäftsbedingungen“, „AGB“) of the customer, our Standard Terms and Conditions of Sale shall have exclusive application. Purchase terms and other AGB of the customer are expressly objected to herewith. The objection shall also apply if we do not again object to the AGB after receipt thereof.
- (3) thenex will not assume any liability for any typographical, clerical or other error or omission in any general sales literature, quotation, price list, acceptance of offer or other document of information issued by thenex.

2. Orders and Specifications

- (1) Offers or orders of the customer shall be deemed to be accepted by us only with our express declaration of acceptance in writing. Silence with regard to such an offer or order shall not be deemed to be acceptance.
- (2) Our offers are subject to change without notice. They are deemed to be binding for us only upon express statement in writing.
- (3) Our declarations must be in writing or made in electronic form within the meaning of §§ 126a, 127 German Civil Code („Bürgerliches Gesetzbuch“, „BGB“). The requirement of a writing shall also be deemed to be met with a copy of an original signed and retained by us. Computer processed order confirmations which are expressly designated as such are deemed to meet the requirement of a writing standard.
- (4) The quantity, quality and description of and any specification for the goods or services shall be those set out in thenex's binding quotation (if accepted by the customer) or the customer's order (if accepted by thenex).
- (5) The customer shall be responsible to thenex for ensuring the accuracy of the terms of any order submitted by the customer, and for giving thenex any necessary information relating to the goods or services ordered within a sufficient time to enable thenex to perform the contract in accordance with its terms.
- (6) If the goods are to be manufactured or any process is to be applied to the goods by thenex in accordance with a specification submitted by the customer, the customer shall indemnify thenex against all loss, damages, costs and expenses awarded against or incurred by thenex in connection with or paid or agreed to be paid by thenex in settlement for any claim of infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from thenex's use of the customer's specification.
- (7) thenex reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory requirements, provided that such changes do not materially affect the quality and usefulness of the goods to be supplied.
- (8) thenex reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not strongly affect the form and function of the product.
- (9) Any specifications, sales literature or quotations shall be strictly confidential and must not be made available to third parties.
- (10) With deliveries in other EU member states, prior to the conclusion of the contract, the customer shall be obligated to inform us of his value added tax identification number.

3. Sales Price

- (1) If not otherwise agreed upon, the sales price shall be thenex's quoted price or, where no price has been quoted, the price listed in thenex's published price list current at the date of acceptance of the order.
- (2) thenex reserves the right, by giving notice to the customer at any time before delivery of the goods or execution of the services, to increase the sales price to reflect any increase in the cost to thenex which is due to any factor beyond the control of thenex (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.
- (3) All prices quoted by thenex are understood to be "EX WORKS" according to the INCOTERMS in the newest version applicable at the time of the conclusion of the contract except as otherwise stated under the terms of any offer or in any price list of thenex, or unless otherwise agreed in writing between the customer and thenex.
- (4) The prices are understood without domestic or foreign value added tax in the respective statutory amount.

4. Payment; Securities; Set-Off

- (1) The customer shall pay the sales price within 30 days from the date of thenex's invoice.
- (2) If not otherwise agreed upon, payments shall be effected by bank transfer only; presentation of cheques or bills of exchange will not be considered as fulfilment of the payment obligation. It may be agreed between the parties that the customer has to deliver a Documentary Letter of Credit via a bank acceptable to thenex. This Documentary Letter of Credit shall be issued in accordance with

the Uniform Customs and Practice for Documentary Credits in the newest version applicable at the time of the conclusion of the contract.

- (3) Should the customer be in default of payment or should our accounts receivable be threatened by deterioration of the credit-worthiness of the customer, then we shall be entitled to make our accounts receivable immediately payable and due or to demand security thereby. In such case, we shall also be entitled to cancel the contract or shall be allowed to perform still-outstanding deliveries only after receipt of advance payments or with provision of security. In such case, we shall also be entitled to revoke the collection authorization pursuant to Item 7, para. 7 hereof.
- (4) Should the customer be in default with payment and such indicates a risk to our capability of realizing a substantial portion of our accounts receivable, then we shall be entitled to prohibit the further processing of the goods already delivered by us, to retrieve the goods and, if applicable, to access the business operations of the customer for this purpose. The retrieval of goods is not the equivalent of cancellation of the contract.
- (5) The statutory provisions concerning default of payment shall remain unaffected. We reserve the right to claim further losses, in particular resulting from additional expenses in connection with financing, interest, change of currency interchange rates and forward exchange hedging contracts.
- (6) Custom fees, consular costs, freight charges, insurance premiums and other costs which exist in connection with the performance of the contract shall be invoiced separately to the customer. If it is otherwise agreed that such costs shall be included in the price, then such cost increase occurring after the conclusion of the contract shall be invoiced to the customer.
- (7) Should a customer located outside of the Federal Republic of Germany or its authorized representative pick up goods and transport or transfer these outside the Federal Republic of Germany, then the customer shall prove such by transfer of documentary evidence which conforms to the requirements of the value added tax law of the Federal Republic of Germany. Should this proof not be provided within 30 days after delivery of the goods, then the customer shall be obligated to pay to thenex the value added tax on the invoiced amount pursuant to the value added tax rate applicable for the deliveries within the Federal Republic of Germany.
- (8) We are entitled, to set-off with all accounts receivable which we or such companies of which we are directly or indirectly a shareholder, have outstanding against the customer.
Furthermore, we shall be entitled to set-off against all accounts receivable which the customer, regardless of the legal reason, has against us or those companies of which we are directly or indirectly a shareholder.
Upon demand, we shall make available a complete list of the affiliated companies in which we hold a participation.
Securities which exist for us or one of our affiliated companies shall be liable respectively for the accounts receivable of all of these companies.
- (9) The customer may only set-off amounts with accounts receivable which are non-disputed or determined with final res judicata effect. He shall only be entitled to retention rights insofar as such concern the same contract relationship.

5. Delivery

- (1) Deviations of measurements, weight and quality are permissible within the framework of applicable DIN-norms or customary practice, insofar as not otherwise agreed. In case of delivery of bulk goods a delivery tolerance of + / - 3 per cent shall be permissible without adjustment of the sales price.
- (2) The delivery conditions shall be the commercial clauses according to the INCOTERMS in their newest version applicable at the time of the conclusion of the contract. If in particular the delivery condition "EX WORKS" was agreed upon, the delivery is deemed to be executed if the customer has received sufficient notice that the goods are placed at his disposal at the named place.
- (3) Requested delivery dates have to be agreed by contract.
- (4) If the customer does not perform contractual obligations – also cooperation or auxiliary obligations – such as e.g. opening of a Letter of Credit, production of domestic or foreign certificates, making of an advance payment or the like – in a timely manner, we shall be entitled to postpone our delivery deadlines and delivery dates – regardless of our rights arising from the default of the customer – in accordance with the requirements of our production operations.
- (5) If we are prevented from performing our obligations due to unforeseen circumstances of Force Majeure which affect us or our suppliers, the period of delivery shall be extended by the term of the hindrance and a reasonable start-up period. Should the delivery be impossible or unreasonable for us due to the hindrance, then we can cancel the contract; the customer shall have the same right if the acceptance is unreasonable for him due to the delay.
- (6) In the event thenex is responsible for the failure to meet delivery deadlines, it can be agreed contractually that thenex pays liquidated damages in favour of the customer in the amount of 1 per cent per week of the value of the delayed goods, however, in all not more than 3 per cent of the value of the delayed goods or services. Such payment obligation shall not be applicable, if it can be reasonably concluded from the circumstances of the particular case that the customer has suffered no loss by the delay.
- (7) With failure to meet delivery deadlines, the customer shall first be entitled to rights arising from § 323 BGB if we are in default and he has fixed a reasonable extension of the deadline for delivery which – insofar as in deviation of § 323 BGB – includes a statement that he shall refuse acceptance of the performance after expiration of the extended deadline; after unsuccessful expiration of the extended deadline, the claim for performance shall be precluded. The right of cancellation shall basically extend only to the not-yet performed part of the contract. Insofar as performed instalment deliveries are not capable of being used by the customer, he shall also be entitled to cancel with regard to these instalment deliveries.
- (8) Further rights arising from default of delivery, in particular damage claims, are precluded to the extent stated in Item 9 hereof.

(9) Should the loading or shipment of the goods be delayed for more than 4 days for reasons for which the customer is responsible, then we shall be entitled to place the goods in a warehouse at our discretion at the cost and risk of loss of the customer, to undertake all measures appropriate for the maintenance of the goods and to invoice the goods. In this case our payment claim is payable and due 30 days after the invoice date. In this case, the date of notice of readiness for dispatch is deemed to be the date of transfer of risks within the meaning of Item 8, para. 7 of these Standard Terms and Conditions of Sale.
The statutory provisions regarding default of acceptance shall remain unaffected.

(10) We shall be entitled to make instalment deliveries.

(11) We reserve the right to ship the delivery from a foreign factory or warehouse or from a foreign subcontractor.

6. Transfer of Risks

(1) Insofar as not otherwise agreed, the risks of loss shall be transferred to the customer pursuant to the contractual delivery terms as set out in the INCOTERMS, in particular, in case of delivery "EX WORKS" upon receipt of the notification of readiness for dispatch, by which the goods are placed at the disposal of the customer.

7. Retention of Title; Assignment of Accounts Receivable

(1) The delivered goods remain our property (goods subject to reservation) up until full payment of all accounts receivable, in particular, also of the respective balance accounts receivable which we have against the customer within the framework of the business relation.

(2) Processing and conversion of the goods subject to reservation shall occur for us as supplier or manufacturer within the meaning of § 950 BGB, without obligating us. The processed and converted goods shall apply as goods subject to reservation within the meaning of para. 1 hereof.

(3) With the processing, combination or commingling of the goods subject to reservation with other goods by the customer, we shall be entitled to co-ownership in the new goods in the relationship of the invoice value of the goods subject to the reservation compared to the invoice value of the other used goods. Should our ownership be dissolved by processing, combination or commingling, then the customer transfers to us already now the ownership or expectancy rights to which he is entitled in the new product or the goods to the extent of the invoice value of the goods subject to the reservation, in the case of processing in the relationship of the invoice value to the invoice value of the other used goods and shall store the goods subject to reservation at no cost to us.
Our co-ownership right shall apply as goods subject to reservation within the meaning of para. 1 hereof.

(4) The customer may only resell the goods subject to reservation in the normal course of business in accordance with his normal general terms and conditions and as long as he is not in default, provided that he agrees to a retention of title with his customer and that the accounts receivable from the resale are transferred to us pursuant to para. 5 and para. 6 hereof. The customer is not entitled to any other disposals of the goods subject to reservation.
The use of the goods subject to reservation for the performance of works contracts and contracts which have the subject matter of the delivery of movable goods to be manufactured or produced shall also be deemed to be a resale ("contract for work done and materials supplied").

(5) The accounts receivable of the customer from the resale of the goods subject to reservation shall be assigned to us already now; this shall apply with the placement of the resale accounts receivable in a current account in the amount thereof also for the respective balance accounts receivable. In the same way, insurance claims of the customer in connection with the goods subject to reservation shall be assigned to us already now. The assigned accounts receivable and insurance claims shall serve as security in the same manner as the goods subject to reservation within the meaning of para. 1.

(6) Should the goods subject to reservation be resold together with goods not delivered by us, then the accounts receivable from the resale or the respective balance accounts receivable shall be assigned to us in the relationship of the invoice value of the goods subject to reservation compared to the invoice value of the other goods.
With the resale of goods to which we have co-ownership rights pursuant to para. 3 hereof, a portion of the accounts receivable shall be assigned to us corresponding to our co-ownership share.

(7) The customer shall be entitled to collect accounts receivable from the resale or balance accounts receivable, unless we revoke the collection authorization in the cases named in Item 4, para. 3. The customer shall be obligated, upon our demand, to notify his customers immediately of the assignment to us – insofar as we do not do so ourselves – and shall give us all information and documents necessary for the collection.

(8) In no case shall the customer be entitled to any other assignment of accounts receivable. This shall apply also for factoring transactions; the customer shall also not be allowed to do so on the basis of the collection authorization. We are, however, prepared to agree to factoring transactions in individual cases insofar as the equivalent amount herefrom finally flows to the customer and the settlement of our accounts receivable is not threatened.

(9) The customer must notify us of an attachment or other encroachments by third parties without undue delay. If the customer fails to do so in due time he will be held liable for any damages caused.

(10) Should the value of the existing securities exceed the secured accounts receivable by more than 10 per cent, then we shall be obligated, upon demand of the customer, to release securities at our choice in this amount.

(11) Should the retention of title not be legally valid according to the law applicable where the goods are located, then a security corresponding to the retention of title shall be deemed to be agreed. Should the cooperation of the customer be necessary for the creation of such rights, then he shall undertake all measures which are necessary to establish and maintain such rights.

8. Warranties

- (1) thenex warrants that the goods delivered will have a quality according to contract and will be free from defects in material and workmanship. The condition and quality and absence of defects in accordance with the contract of our goods shall be measured exclusively pursuant to the express agreements concerning quality / characteristics and amounts of the goods ordered at the date of the transfer of risks. We shall not be liable for deterioration or destruction or improper treatment of the goods after transfer of risks. thenex shall not be liable for any defects arising from incorrect description or specification of goods supplied by the customer. This warranty does also not cover any defects due to improper installation or maintenance, misuse or negligence by the customer or any other cause the customer is responsible for.
- (2) A warranty for a certain fitness or a certain purpose shall only be undertaken insofar as such is expressly agreed; otherwise the customer shall have the exclusive risk of fitness and use. Contents of agreed specifications and any expressly agreed use shall not establish a guarantee; the assumption of a guarantee shall require an express written agreement.
- (3) The customer shall within the meaning of § 377 German Commercial Code („*Handelsgesetzbuch*“, „*HGB*“) inspect the goods received without undue delay after receipt. Warranty rights exist only if defects are objected to without undue delay in writing. Latent defects of quality must be objected to without undue delay after their discovery. After performance of an agreed acceptance, the objection to defects which could have been determined with this acceptance shall be precluded.
- (4) With objections, the customer shall give us the opportunity without undue delay to examine the goods objected to; upon demand, the goods objected to or a sample of the same shall be placed at our disposal at a place nominated by us at the cost of the customer. With unjustified objections, the customer shall bear the cost connected with the examination unless otherwise agreed.
- (5) With the existence of a defect of quality, we shall, at our discretion – taking into account the interests of the customer – at our expense perform subsequent improvement by replacement delivery or by remedy. Should the subsequent improvement not be successfully performed by us within a reasonable time period, then the customer can fix a reasonable deadline for us to perform subsequent improvement, after the unsuccessful expiration of which he can either reduce the purchase price or cancel the contract; further rights due to defects are precluded to the extent set forth in Item 9 hereof.
- (6) With the existence of legal defect of title, we shall be entitled to perform subsequent improvement by elimination of the legal defect of title within a reasonable time period which shall generally be at least two weeks as of receipt of the notification of defect. Otherwise, para. 5 hereof shall apply accordingly.
- (7) The deadline for the statute of limitations of claims due to defects of quality of movable goods, notwithstanding §§ 478, 479 German Civil Code („*Bürgerliches Gesetzbuch*“, „*BGB*“) and insofar as not otherwise expressly agreed between the parties, shall be
 - a) a term of three years after transfer of risks pursuant to para. 1 for those goods which are used in accordance with their usual purpose for a building and which caused its defectiveness and
 - b) otherwise a term of one year after transfer of risks pursuant to para. 1.
 In addition, with regard to the statute of limitations provisions relevant for defects, the statutory provisions shall apply.
- (8) Should the customer be entitled to recourse claims against us pursuant to § 478 German Civil Code („*Bürgerliches Gesetzbuch*“, „*BGB*“), these shall be limited to the statutory scope of the warranty claims of third parties against the customer. The customer shall be obligated to defend such claims – insofar as expedient.
- (9) We shall grant a warranty in the same manner for the remedy or replacement delivery as for the original delivery. Respective claims shall be time-barred
 - a) with goods which are used in accordance with their usual purpose for a building and which caused its defectiveness, after three years as of completion of the remedy or transfer of risks of the replacement delivery pursuant to para. 1, but by no means, however, later than 48 months after the transfer of risks of the original delivery pursuant to para. 1 hereof,
 - and
 - b) otherwise after one year as of completion of the remedy or transfer of risks of the replacement delivery pursuant to para. 1, but by no means, however, later than 18 months after the transfer of risks of the original delivery pursuant to para. 1 hereof.

9. General Limitations of Liability

- (1) Insofar as not otherwise regulated in these Standard Terms and Conditions of Sale, we shall be liable for damages due to breach of contractual or extra-contractual obligations or upon the preparation of the contract only with wrongful intent or with gross negligence of our statutory representatives or employed persons as well as negligent breach of essential contract obligations (cardinal obligations).
- (2) With negligent breach of cardinal obligations, we shall be liable – with the exception of cases of wrongful intent or gross negligence of our statutory representatives or employed persons – only for damage which is foreseeable and typical for the specific kind of contract.
- (3) Our liability is limited in total to the payments of our employers' liability insurance.
- (4) With negligent breach of cardinal obligations, our liability is, in addition, limited in total to double the contract value of the respective delivery which was the cause of the damage.

10. Applicable Law; Jurisdiction

- (1) The law of the Federal Republic of Germany applicable for the legal relationships of domestic parties shall apply exclusively for all legal relationships between us and the customer, to the exclusion of the UN Sales Law.

(2) Notwithstanding the jurisdiction for measures of preliminary injunction proceedings, jurisdiction for all other legal disputes shall be at the location of the registered office of our company. We shall be entitled, however, to also file an action against the customer in the courts of his general jurisdiction.

11. Partial Invalidity; Data Protection

(1) These Standard Terms and Conditions of Sale shall remain in effect as whole also in the case of the legal invalidity of any part of their provisions.

(2) Data becoming available in connection with the business relation will be stored in files by thenex.

Bocholt, 21.06.2011