

Terms and Conditions of Business 08/2017

for the sale of Nüsing products

1. Preface:

These terms and conditions are valid for all deliveries (sales, contracts for work and materials as well as for services) of the firm Franz Nüsing GmbH & Co. KG (hereinafter referred to as „supplier“) towards its customers (hereinafter referred to as „purchaser“).

Differing agreements, in particular contradictory terms and conditions of business require the explicit confirmation in writing through the supplier. If single terms may be invalid the validity of the other terms will remain untouched.

In addition to these terms and conditions the VOB (German Construction Contract Procedures) part B are applied, whereas these terms have priority towards the VOB.

2. Prices:

The prices are quoted in Euro exclusive of VAT and are without engagement. The VAT is calculated after delivery according to the valid rate of taxes. Cash discount deductions are not permitted.

If the delivery is not effected within 6 months after confirmation of order due to reasons of contractual agreement or because of other reasons the supplier is allowed to calculate the prices valid on the day of delivery.

3. Delivery and Risk:

The agreed delivery time begins when the supplier receives the final manufacturing dimensions and after receipt of all construction documents. If the supplier is behind schedule with the delivery, the purchaser will have to determine this circumstance expressly and grant an extension of time of four weeks; if the purchaser is a trader the extension will be eight weeks. Reminder and deadline are effected by a non-trader in ordinary written form, by a trader per registered letter. If no delivery has been effected until the end of the extension of time the purchaser has the right to resign from the contract by written statement. Claims for damages or contract penalties due to non-fulfillment are excluded; for deliveries to non-traders this exclusion is limited to cases in which a grossly negligent respectively willful misconduct on behalf of the supplier can be proved.

For delivery ex works the risk is transferred to the purchaser in all cases on dispatch of the goods, i.e. when the goods leave the supplier's firm.

For preservation of evidence the purchaser has to check immediately on delivery if the goods are free of defects. He has to notify as well the carrier as the supplier of apparent defects by telephone or in writing.

4. Execution of installation:

Modifications of the order after placement of order are only binding for the supplier upon written confirmation. The purchaser will be charged additionally with the costs for the modification.

The purchaser assures that the statically necessary bearing capacity is available for the parts to be installed by the supplier. Sufficient screw-on/screw-off options are to be arranged on site on time. Corresponding performances executed by the supplier are to be ordered separately at extra cost. Hidden installations in the area of the place of installation are to be indicated to the installers. The supplier is not liable for damages caused due to failure.

If the place of installation within the building is only accessible by using a crane, the purchaser bears the costs for the truck-mounted crane or makes the free use of existing building cranes possible.

Preinstallations of ceiling and ground rails are performances provided by the purchaser if they have not been accepted expressly by the supplier.

The installation has to be executed unhindered in a successive work process. The purchaser will be charged on a time and material basis for delays and interruptions caused without any fault on the supplier's part.

If the installation is not possible immediately after delivery the purchaser has to take care for dry storage avoiding contaminations and damages.

5. Payment and Securities:

The invoice amount is due strictly net within thirty days after date of invoice. For deliveries with a value of goods of over 2.500,00 Euro (including installation without VAT) the following settlement dates are applied:

- a) 40 % of the total order value are due within eight days after preinstallation of the slide rail.
- b) further 60 % of the total order value are due within 30 days after installation.
- c) for deliveries without installation the total order value is due within 30 days after date of invoice.

The supplier has at any time, also after order acceptance respectively before the mentioned settlement dates, the right to demand the guarantee of a domestic bank from the purchaser in order to secure his pecuniary claims. The supplier has to be provided with the guarantee through the purchaser within eight days after written demand. The costs of the guarantee bears the supplier if the purchaser has not exceeded the dates of payment respectively part payment. In case of exceeding a date of part payment the purchaser has to bear the total costs of the guarantee.

For payments made after settlement date the supplier can demand from the purchaser interest from the settlement date on in the amount of 4% above the prime rate of the ECB. This procedure is valid with non-traders after a term of eight days after receipt of a written reminder from the supplier. Furthermore the supplier is allowed to stop operations from the settlement date on, with non-traders from the delay on until payment without any separate notice towards the purchaser. This is also valid if the supplier is not provided with the guarantee within the mentioned term of eight days.

§ 9 VOB Part B remains untouched. Notwithstanding further claims of the supplier the compensation according Clause 9 para. 3 point 2 VOB Part B set at 15 % of the total order value. Non-traders are allowed to prove that this compensation is unreasonably high at the ratio of the damage caused to the supplier.

The supplier has also the right to cancel according to Clause 9 VOB Part B, if he finds out after termination of contract that the purchaser is unworthy of credit. This is especially valid if the purchaser has stopped his payments or if judicial execution with respect to the entire purchaser's estate has been effected within the last two years before conclusion of the contract or after it. With the adduction of an evidence of such incidents through a reputable credit agency or bank the responsibility is considered to be fulfilled.

All payments are to be effected directly to Nüsing GmbH & Co. KG. Sales representatives of the supplier are not entitled to encashment. Payments by cheque or money order are considered to be effected after credit entry on the supplier's account as far as the means of the purchaser's payment are covered.

Clause 16, para. 3 point 2 VOB is excluded.

6. Guarantee:

The supplier guarantees the faultless quality of the delivery item according to VOB Part B. Claims for compensation of direct or indirect damages are excluded. This is not valid for deals with non-traders concerning damages caused due to grossly negligent respectively intentional behavior of the supplier. Excluded from all claims for compensation remain defects or failures which are caused due to force majeure, atmospheric influences or non-professional installation through third parties.

This is also valid for defects or damages which are traced back to the fact of natural abrasion or incorrect treatment through the purchaser. Insignificant, customary or technically-related variances which meet with the ordinary character, for example grain and shading cannot be complained. Each delivery is a customization. It cannot be exchanged or taken back.

If the purchaser is a trader he is neither entitled to a defense of non-performance nor a right of retention or a right to set-off in regard to the purchase price caused by the defects of the delivery item.

In case of sound absorbing constructions the assured characteristics in respect of the decibel values only extend to the supplier's delivery and no other components. Our prototype tests for sound absorption shall offer possibilities of comparison. The repeatability of the value in practically existing openings in new buildings is only given if environment and model correspond exactly to the prototype. We are not committed to make surcharges for possible arising losses above the offered values. The conditions of the DIN 4109 and the VDI (Verein Deutscher Ingenieure / Association of German Engineers) guidelines 3728 are to be understood as accepted.

If apparent defects are not announced in writing within eight days after delivery towards the supplier any claims against the supplier regarding these defects are excluded.

For electrical parts belonging to the delivery, the statutory warranty of 24 months applies.

7. Retention of Title (ROT):

The supplier reserves the title to all goods until the purchaser has settled all accounts – also occurring in the future –including a possibly existing claim arising from an open account rate. Payment by bill of exchange or cheque is not valid as payment as long as the encashment of the paper has not been effected. The purchaser is entitled to resell the goods delivered by the supplier only in proper business.

Then is essential:

The purchaser assigns already now all claims in the amount of the order total to the supplier of which he is entitled because of the resale or other legal ground. If the retained goods after processing, especially after processing with other goods not belonging to the supplier, are resold the assignment is effected in the amount of the order total at the time of the processing.

If the retained goods are used by the purchaser for fulfillment of a contract, the purchaser assigns already now the claims of this contract to the supplier until the amount of the order total at the time of delivery. The purchaser is entitled and committed to collection of the claims assigned to the supplier as long as the supplier has not revoked this authorization. The authorization of collection expires also without explicit revocation if the purchaser ends his payments. The purchaser has to inform the supplier immediately on demand in writing to whom he has delivered the goods and to which claims he is entitled to out of this delivery.

With the total payment of the supplier's claims out of the business relation the supplier's property in the articles as well as all assigned claims are transferred to the purchaser. The supplier commits himself to release all securities to which he is entitled to according to the preceding terms, as far as the value of the not yet resold goods and the assigned claims does not exceed the value of the total amount of claims towards the purchaser by more than 20%.

8. Place of Jurisdiction and Fulfilment:

Place of fulfillment for deliveries and payments is 48163 Muenster. In commerce with a trader Muenster is concluded as place of jurisdiction – also for proceedings restricted to documentary evidence. German law applies.

Franz Nüsing GmbH & Co. KG, Münster, Germany