

**General terms and conditions of contract and warranty  
for Nagel & Hermann  
a company constituted under civil law, Sonnenstrasse 2, 6890 Lustenau,  
hereinafter known as Nagel & Hermann**

**1. Scope of application**

The following General Terms and Conditions shall apply to all deliveries and orders provided by Nagel & Hermann, even if no specific reference is made hereto. Changed or derogating conditions, especially conflicting conditions of the customer, will not be accepted as legally binding unless approved expressly in writing and duly signed by Nagel & Hermann.

**2. Contracts and Orders**

All orders and contracts become legally effective with the written order acknowledgement of Nagel & Hermann, and in the absence thereof, upon acceptance of delivery at the latest.

Information contained within catalogues, brochures, etc. or specifications of samples (such as colour, conditioning and dimensions) are only binding when they have been explicitly referred to in the order acknowledgement.

**3. Prices**

Unless otherwise agreed, all prices are understood as net, in Euros and are ex-works, in accordance with INCOTERMS (2000). Invoicing by Nagel & Hermann is done in Euros, whereby in each case the prices valid at the time of supply are legally effective.

**4. Terms of Payment**

Unless otherwise agreed, payments are to be made in Euros either in advance or by means of irrevocable letter of credit. Nagel & Hermann may request confirmation from one of their approved banks. Payment will be deemed effective when Nagel & Hermann may dispose of the funds freely at its registered office. Where payment is due in a freely convertible currency other than that of the invoice, the exchange risk and all the related charges shall be borne by the Client. Bank charges shall be debited to the Client. The Client recognises his obligation to start paying interest at a value of 12% p.a. from the due date. Furthermore the customer is responsible for all reminder- and debt collection

costs. Any claims, counterclaims or demands for remuneration made by the Client do not entitle them to an extension of their time of payment beyond its due date. Nagel & Hermann reserve the right to change the terms of payment or not to fulfil any agreement with the Client, if it appears necessary due to the financial situation or the Client's previous payment record.

## **5. Delivery**

5.1 All deliveries are ex-works Lustenau, in accordance with Incoterms 2000. Deliveries are carried out by Nagel & Hermann in line with their operational possibilities. The delivery period begins from the date the order is acknowledged. Specified delivery dates shall not be binding and they arise from the order acknowledgement and/or the delivery schedule. Completions are excluded. Partial deliveries are permitted and can be invoiced. Nagel & Hermann is not liable in any way for delayed deliveries or failure to deliver, nor for any consequential damages.

5.2 Nagel & Hermann are obliged to fulfil the contract subject to unforeseeable circumstances or circumstances beyond the control of the Party concerned, such as a Force Majeure, wartime situations, acts of government and prohibitions, transport and customs delay, transport damages, energy shortage as well as industrial action. The aforementioned circumstances, if they occur with suppliers, also entitle an extension of the delivery time.

5.3 Should the despatch of goods ready for shipment be delayed by circumstances unrelated to Nagel & Hermann or for reasons attributable to the Client, then Nagel & Hermann may store the goods at the Client's own cost and risk, whereby the delivery is deemed as valid. The agreed payment terms remain unaltered as a result.

5.4 Deviations from quantity, size, weight and quality are permissible as per the relevant instructions for the individual product groups like, for example, on price lists.

## **6. Notification of defects, warranty**

6.1 The following statements apply to defects present at the time of the handover. Excluded from this are defects to machines and/or appliances, for these the terms under paragraph 8 "Warranty for Machines/Appliances", solely apply.

6.2 The Client is obliged to inspect the goods thoroughly upon receipt. Defects determined objectively through a thorough inspection have to be claimed in the form of a registered letter within 14 days of receipt of goods at the place of destination, including a detailed description of the defect, otherwise the goods are deemed as approved and the warranty rights are lost. If despite a thorough inspection the defects are not uncovered within 14 days, Nagel & Hermann give a maximum of 6 months warranty from the delivery date on material or manufac-

turing faults, as long as these faults already existed at the time of handover. The burden of proof rests with the Client.

6.3 The only possibilities of warranty are replacement deliveries of goods free from defect or an appropriate reduction in price and Nagel & Hermann have to decide what is applied. Should in an individual case the repair work be agreed upon, the Client, in case of doubt, has to bear all transport costs where applicable.

6.4 Warranty claims regarding defective goods supplied by a third party are limited to the extent in which the supplier honours these claims towards Nagel & Hermann. Warranty claims from Nagel & Hermann depend therefore on the given warranty claims of the supplier.

6.5 Returns are only carried out with the approval of and as instructed by Nagel & Hermann.

6.6 Making a claim does not legitimate the withholding of payment, even in part.

## **7. Liability**

Nagel & Hermann's liability is restricted to damages affecting the service itself. All other damage replacements are excluded unless it is a case of gross negligence. The burden of proof lies with the Client. Within the frame work of product liability, Nagel & Hermann are only liable for personal damages and such damages to property which a consumer incurs. Alterations to the delivery item, non-compliance with instructions for use, not noting product information, the use of parts other than the original ones from Nagel & Hermann or unauthorised use discharge Nagel & Hermann from any liability. The Client commits themselves to the transfer of restricted liability in the case of a further sale to future customers.

## **8. Warranty for Machines/Appliances**

8.1 Notwithstanding point 6 it is applicable in particular in regard to defective machines and appliances. For this there is a 12-month guarantee on the part of Nagel & Hermann protected under the following terms.

8.2 A prerequisite for laying a warranty claim, is that there is a nameplate from the manufacturer on the machine and that it has been operated for a maximum of 8 hours per day. Warranty, as well as guarantees, are only performed if the machine has been used correctly and in line with the recommendations made in the operating manual. Furthermore, the Client must have fulfilled all their obligations towards Nagel & Hermann. In order to validate the claim for defective goods, the client must disclose the model number and number of the machine as they appear on the nameplate. If a nameplate cannot be found on the machine the Client must prove that his claim is justifiable.

8.3 The guarantee only applies to defects in the form of defective material and poor manufacture that arise within 12 months from the handover. Damages

from breakages and all other types of wear and tear on exposed parts such as heating, Teflon, rubber and plastic parts as well as gaskets, glass and relays do not come under guarantee. Should a guarantee be granted once, the entire period of guarantee does not thereby extend itself.

8.4 Defects have to be disclosed immediately by means of a registered letter within 8 days after the event at the latest, otherwise the guarantee rights are lost. The machine/the appliance must be sent prepaid as instructed by Nagel & Hermann either to Nagel & Hermann or the indicated manufacturer. The guarantee covers an inspection of the defective machine/appliance and an examination of the complaint, Nagel & Hermann have discretion over whether to send a free replacement or to carry out repair work free of charge. If repair work is necessary on site, the Client has to assume the travel expenses. Transport costs have also to be debited to the Client. Further demands from the Client, in particular a demand for replacement of damaged goods, which did not emerge on the delivery item, have no validity.

8.5 For outsourced work and parts the guarantee only exists in the scope in which they too are warranted by the manufacturer of this part. Consequently the guarantee is subject to the condition that, relevant warranty or guarantees can be made by the manufacturer and cannot exceed these benefits.

8.6 In the case of guarantees, it does not authorise withholding payment, even in part.

8.7 Tampering or modifications are not permitted on the machine/appliance without the approval of Nagel & Hermann. If the machine/appliance incurs damages at the manufacturer's or supplier's site as a result of insufficient packaging, the warranty claim does not apply.

8.8 Nagel & Hermann bear in mind to carry out technical alterations to improve the machine (appliance) for claims on the guarantee. Important repairs that are necessary due to incorrect use and no longer come under guarantee, are promptly carried out at the lowest prices. Nagel & Hermann do not take on any liability for any consequential damages.

## **9. Reservation of Ownership**

Nagel & Hermann reserve the rights of ownership to the object of purchase until the Client has settled his financial obligation in full. If the product is further processed, Nagel & Hermann have joint ownership over the new product regarding the value ratio of the incorporated component. Until the moment of cancellation the Client is authorised to sell on the delivered goods or the processed goods under reservation of title, in the framework of his proper business concerns. Until he has paid the purchase price in full the Client transfers all owing claims when he sells the goods on. Nagel & Hermann may notify the Client's customer at any time of the assumption of contract and of indebtedness. Nagel & Hermann is authorised to safeguard the proviso in case the Client has not fulfilled his contractual obligations, in particular the proviso of incorrect use or arrears in

payments. Carrying out the issuance and the safeguard are not valid as a cancellation of a contract and do not annul the Client's duties, in particular not the payment of purchase.

## **10. General**

The Client must ensure that the obligations in point 7 and 8 are transferred to every further customer. This contract is subject to Austrian law. Dornbirn, Austria is the place of jurisdiction, or if Nagel & Hermann so choose it may be the competent court at the Client's location. The application of regulations from the Vienna Convention regarding the international sale of goods is expressly excluded. The Client may only transfer his rights and duties from this contract with the written approval of Nagel & Hermann. The Client may only offset his claim against Nagel & Hermann or validate his right of retention if his counter demand is undisputed or confirmed as legally valid. If one or more conditions within the contract are annulled, the validity of the other conditions in the contract remain unaffected.

Dated 04.04.2007

*The General Terms and Conditions of Contract and Warranty for Nagel & Hermann, a company constituted under civil law, apply stringently as an integral part of the contract.*

*So Nagel & Hermann, a company constituted under civil law, is only ready to draw up a contract under the comprehension of these terms and conditions. These can be downloaded from our homepage at: [www.nundh.com](http://www.nundh.com) and/or may be requested at any time.*