

## General Terms and Conditions of Business of Neobotix GmbH, status as of 2 Nov. 2010

1. **General**

All deliveries and services of Neobotix GmbH (hereinafter referred to as the "Contractor") are subject to these General Terms and Conditions of Business and any separate contractual agreement. Any deviating or supplemental general terms and conditions of business of the purchaser apply only to the extent that the Contractor has expressly consented to them in writing.
2. **Offer - conclusion of the agreement - subject matter of the agreement**
  - 2.1. Offers are subject to confirmation, to the extent that they are not expressly identified as binding. A binding offer must be accepted by the purchaser within a reasonable period, or a period noted in the offer, in order to maintain its binding effect.
  - 2.2. An offer is deemed to be accepted upon receipt of a corresponding order. All amendments or supplements must be in writing; oral commitments or statements are ineffective.
  - 2.3. The drawings, technical specifications and other documents attached to the offer are subject to the Contractor's ownership rights and copyrights; the purchaser may not make these accessible to third parties.
3. **Scope of deliveries and services**
  - 3.1. For the scope of deliveries and services, the Contractor's offer and/or its written order confirmation is controlling. Partial deliveries are permitted, to the extent that they are reasonable for the purchaser.
  - 3.2. In the inventions developed upon the conducting of the order and in the intellectual property rights applied for by the Contractor for it, the purchaser is to receive a non-exclusive, free-of-charge use right, limited to the application purpose underlying its order.
4. **Prices and payments**
  - 4.1. Items of information in price lists and other general pricing information are subject to confirmation.
  - 4.2. Prices are stated in Euros and, to the extent not otherwise agreed, apply ex factory plus the applicable statutory value-added tax.
  - 4.3. An invoice regarding deliveries, assembly and start-up work is to be paid to the account of the Contractor within 14 days after issuance of the invoice under a deduction of a 2% discount, or within four weeks without any deduction.
  - 4.4. An invoice regarding other services is to be paid immediately after issuance of the invoice, without any deduction.
  - 4.5. The purchaser may withhold payments based on counterclaims or engage in a set-off with counterclaims only to the extent that these are undisputed and legally established.
5. **Time periods for deliveries and services, delay**
  - 5.1. To the extent that the offer contains a processing period or a deadline, these are deemed to be binding only if the Contractor has expressly assured their binding effect. If the Contractor finds out that the binding processing period or the binding deadline cannot be adhered to, it shall notify the purchaser of the reasons for the delay, and agree with the purchaser on a reasonable adjustment.
  - 5.2. The observance of time periods and deadlines for deliveries and services presupposes the timely provision of all services to be furnished by the purchaser or its assigned parties, and the purchaser's adherence to the agreed payment terms and other obligations. If these conditions are not fulfilled on a timely basis, then the Contractor's time periods and deadlines are to be reasonably extended.
  - 5.3. If the non-compliance with time periods is to be attributed to an event of force majeure or a similar occurrence, the time periods are to be reasonably extended. If deliveries and/or services are, in whole or in part, not furnished on a timely basis without the fault of the Contractor, the Contractor is alternatively entitled to withdraw / partially withdraw from the agreement.
  - 5.4. The purchaser is obligated to declare, upon the request of the Contractor within a reasonable obligation, whether it is withdrawing from the agreement because of the default of the Contractor, or if it is insisting on delivery. In the event of withdrawal from the agreement, the Contractor is to pay for the services that have already been furnished.
6. **Set-up and assembly**
  - 6.1. To the extent that the conducting of set-up, assembly and start-up was agreed, the purchaser must assume at its own expense and provide on a timely basis:
    - a) all ground, building and other ancillary work outside of the industry, including the technical and auxiliary workers, building materials and tools needed for this
    - b) the consumer articles and materials (such as stands, lifting tools, lubricants, etc.) necessary for the set-up, assembly and start-up.
    - c) energy and water at the point of use, including connections, heating and lighting
    - d) for the assembly site for the storage of machine parts, equipment, materials, tools, etc., sufficiently large, suitable drying and lockable areas, and for the employees of the Contractor, appropriate working area and lounges (including appropriate sanitary facilities). In all other respects, to protect the Contractor's property at the building site, the purchaser must take the measures that it would take to protect its own property.
    - e) protective clothing and safety devices that are necessary for the assembly site due to special circumstances.
  - 6.2. Prior to the commencement of the work, the purchaser must, without being asked to do so, examine and make available the necessary information concerning the location covering electricity, gas and water lines that are conducted or similar facilities, along with the necessary statistical information.
  - 6.3. Prior to the commencement of the work, the provisions and items found at the set-up or assembly site necessary for taking up the work, and all preliminary work prior to the beginning of the structure, must have progressed so far that, after the arrival of the assembly personnel, the work may be commenced and ended without interruption, as agreed. Delivery routes, along with the set-up or assembly site, must be levelled, vacated and freely accessible.
  - 6.4. If the set-up, assembly or start-up is delayed for circumstances not to be attributed to the Contractor, then, to an appropriate extent, the purchaser must bear the cost for waiting times and any additional necessary trips of the Contractor's personnel.
  - 6.5. Upon request, the purchaser shall certify to the Contractor the duration of the working hours of the assembly personnel and the completion of the set-up, assembly or start-up.
  - 6.6. If the Contractor requires acceptance after completion of the work manufactured according to the terms of the agreement, then it must declare this to the purchaser within two weeks. If this does not occur, acceptance is deemed to be effected after the expiration of this period. Acceptance is also deemed to be effected if the work - if necessary, after conclusion of an agreed test phase - is put into use.
7. **Duty of cooperation upon service work**
  - 7.1. The purchaser shall permit access to the Contractor for the immediate conducting of the services during the usual office hours of the Contractor; otherwise, the Contractor can separately charge for waiting times. If the purchaser desires that the work be conducted outside of the Contractor's usual office hours, the purchaser shall bear the associated extra costs.
  - 7.2. For the conducting of the services, to the extent necessary, the purchaser shall make available auxiliary personnel, resources and technical information. In addition, it shall produce the operating conditions necessary for the completion of the work.
  - 7.3. The purchaser must ensure that the employees of the Contractor may carry out the services without any endangerment. For this purpose, the client must particularly adhere to the intended security measures in accordance with Unfallverhütungsvorschriften (Accident Prevention Regulations) and the VDE, and corresponding safety regulations.
8. **Acceptance**
  - 8.1. Acceptance takes place on the basis of the checklist made available by the Contractor, if a different checklist was not agreed prior to the issuance of the order confirmation.
  - 8.2. The purchaser must examine and accept on-site the products to be delivered by the Contractor, as soon as the Contractor declares its ability to deliver. Without an acceptance having taken place, no product is distributed. Deviating agreements may be made in writing prior to distribution.
  - 8.3. If, regardless of the reason, products are put into operation by the customer, the acceptance is deemed to be effected in any event, notwithstanding point 8.1 or any other agreement.
9. **Passage of risk**
  - 9.1. Risk passes to the purchaser upon the making available of the delivered item. To the extent that the Contractor has also assumed set-up, assembly or start-up, the risk passes to the purchaser upon the delivery of the delivered item at the set-up or assembly site.
  - 9.2. If the shipment of the delivered item, the set-up, assembly or start-up is delayed or omitted for reasons not to be attributed to the purchaser, then the risk passes to the purchaser at the point in time at which it would have passed to the purchaser without the delay.
  - 9.3. When desired by the purchaser, the Contractor shall, at the expense of the purchaser, insure the delivered item against theft, breaking, transportation, fire damages and water damages, or other insurable risks.
10. **Warranty**

For material defects and defects of title, to the exclusion of further claims, the Contractor shall provide - subject to number 12 - a warranty as follows:

  - 10.1. Material defects:
    - a) The purchaser must immediately notify the Contractor in writing of the material defects.
    - b) All those parts or services that exhibit a material defect are to be, according to the choice of the Contractor and free of charge, repaired, newly delivered or newly furnished. The purchaser may not refuse the receipt of deliveries based on immaterial defects.
    - c) For undertaking the necessary remedy and replacement delivery, the purchaser must give to the Contractor the necessary time and opportunity. Only in urgent cases of endangerment to operational security and/or for the fending off disproportionately greater damages, the purchaser has the right to remedy the defect itself or have the defect remedied by a third party, and to demand from the Contractor reimbursement of the necessary expenditures. In such events, the Contractor is to be immediately informed.
    - d) If the subsequent performance does not take place within a reasonable period or if the subsequent performance fails, the purchaser may withdraw from the agreement. If only an immaterial defect is present, the purchaser is only entitled to a right to reduction. The right to reduction otherwise remains barred.
    - e) The withdrawal right expires if the purchaser does not declare withdrawal at the latest of 14 days after receipt of the notice regarding the refusal or failing of the subsequent performance.
    - f) Of the costs arising from the remedy and/or replacement delivery, to the extent that the objection turns out to be justified, the Contractor shall bear the costs of the replacement item (including shipment). In addition, the Contractor shall bear the costs of removal and replacement, along with the costs of the required provision of the necessary assemblers and auxiliary workers (including travel costs), to the extent that no disproportionate encumbrance of the Contractor thereby occurs.
    - g) Claims for material defects do not exist in the following cases: unsuitable or inappropriate use, incorrect assembly and/or start-up by the purchaser or a third party,

natural wear or natural tear, incorrect or careless treatment, non-orderly maintenance, use of unsuitable operating resources, electrochemical influences - to the extent that the Contractor is not responsible for any such cause.

h) If the purchaser or a third party engages in an improper remedy, there is no liability on the part of the Contractor for the consequences arising from this. This also applies if changes are made to the delivered item without the Contractor's previous consent.

i) For claims for damages in all other respects, number 12 is applicable. Claims against the Contractor going beyond this based on a material defect are barred.

#### 10.2. Defects of title

a) If the use of the delivered item leads to the violation of industrial property rights or copyrights within Germany, the Contractor shall, at its expense, provide the right for the purchaser to generally continue to use the delivered item, or modify the delivered item in a manner reasonable for the purchaser such that the violation of the property right no longer exists.

b) If this is not possible at commercially reasonable conditions or in a reasonable period, the purchaser is entitled to withdraw from the agreement. Under the stated conditions, the Contractor is also entitled to a right to withdraw from the agreement.

c) Moreover, the Contractor shall indemnify the purchaser from undisputed or legally established claims based on violations of intellectual property rights.

d) The obligations set forth above exist only to that extent that

- the purchaser informed the Contractor immediately in writing of the claims asserted by third parties, and
- the purchaser does not acknowledge a violation and all preventive measures remain reserved to the Contractor
- the violation of the property right is not to be attributed to the purchaser
- the violation was not caused by special guidelines of the purchaser or by an application not predictable by the Contractor, or the violation arose from the fact that the delivered item was modified by the purchaser or is used together with a product not supplied by the Contractor.

e) Upon the presence of other defects of title, the provisions under number 10.1 correspondingly apply.

f) For claims for damages in all other respects, number 12 is applicable. Claims against the Contractor going beyond this based on a defect of title are barred.

#### 10.3. Services

a) The purchaser must notify the Contractor in writing of any discoverable defect in services within two weeks after provision of the services, and other defects within two weeks after their discovery, but at the latest of six months after provision of the services. Defects in services that are belatedly notified will not be considered. The Contractor shall immediately remedy defects that are correctly notified.

#### 11. Exclusion of warranties

11.1. Information in catalogues, product descriptions, offers, designs or other documents concerning dimension, colour, deployment, technical data and other characteristics, particularly regarding availability, running performance, noise emission, etc., comprise the condition and the ensured characteristics of a delivered item, but, to the extent not otherwise expressly agreed, do not represent warranties (condition or durability warranties) within the meaning of §§ 443, 639 German Civil Code (Bürgerliches Gesetzbuch, "BGB").

11.2. In the event of non-compliance with the warranted characteristics, the purchaser may assert against the Contractor the rights described in numbers 10 and 12.

11.3. The Contractor ensures the application of scientific and technical care, along with adherence to the generally accepted rules of technology, but not for the actual achievement of the research and development target in cases in which new developments or advancements are taking place on behalf of the purchaser.

#### 12. Payment of damages

12.1. The Contractor is liable for the payment of damages, regardless of the legal grounds, only:

- upon intentional acts,
- upon gross negligence of the governing bodies or executive employees,
- upon a culpable injury to life, body or health,
- upon defects that the Contractor fraudulently concealed,
- to the extent that the Contractor has assumed a warranty that the delivered item will retain a certain condition for a certain duration,
- upon defects of the delivered item, to the extent that, under product liability law, there is mandatory liability for personal injuries and property damages for privately used items.

Upon a culpable violation of material contractual obligations, the Contractor is liable also upon the gross negligence of its non-executive employees and upon ordinary negligence, however in the latter case limited to reasonably foreseeable damages typical for contracts. Material contractual obligations are such obligations that protect material contractual legal positions of the purchaser that the agreement must grant to it according to its content and purpose; also material are contractual obligations, the fulfilment of which is absolutely necessary for the orderly conducting of the agreement, and the adherence to which the purchaser may regularly entrust. Claims to the payment of damages going beyond this are barred.

#### 13. Payment of damages in respect of third parties

The liability provisions set forth under numbers 10 and 12 also apply for the benefit of vendors, licensors and other vicarious agents of the Contractor.

#### 14. Retention of title

14.1. The delivered goods remain property of the Contractor until the fulfilment of all claims against the purchaser, even if the specific goods were already paid for.

14.2. The assertion of any claim for restitution is not to be regarded as withdrawal from the agreement. Under delivery of the documents necessary for an intervention, the Contractor must immediately inform the purchaser of compulsory execution measures of third parties into the reserved goods; this also applies to impairments of any other type. Regardless of this, the purchaser must - already from the outset - point out to any such third party the rights existing in the goods. The purchaser is to bear the costs of an intervention, to the extent that the third party is not able to provide reimbursement for such costs.

14.3. In the event of the resale of the reserved goods, the purchaser hereby assigns for security to the Contractor, up to the fulfilment of all claims of the Contractor, the receivables against its customers that arise for it from the mentioned transactions.

14.4. In the event of a processing of the reserved goods, their transformation or their fusion with other items, the Contractor acquires direct ownership in the produced item according to the value of the delivery. These are deemed to be reserved goods.

14.5. If the value of the security exceeds the Contractor's claims against the purchaser by more than 20%, the Contractor is obligated to, upon the request of the purchaser, at its selection release the collateral to which it is entitled to the corresponding extent.

#### 15. Exports

15.1. Upon any export, the purchaser is obligated to observe export control specifications applicable to the delivered items. Upon any violation of export regulations, the Contractor is entitled to withdraw from the agreement.

15.2. If the delivery contains an export by the Contractor that is subject to approval, the agreement is deemed to be concluded only upon the receipt of respective approval. The purchaser is obligated to provide all documents necessary for approval.

15.3. The purchaser agrees to, upon request, submit schedules of application and/or end-use confirmations, even if these are not required by the government.

15.4. In the event of export / shipment, the delivery is released only upon receipt of a legally effective export declaration of German value-added tax.

#### 16. Adjustment of the agreement and withdrawal

16.1. If unforeseeable events within the meaning of number 5.3 substantially change the commercial meaning or the content of the delivery or substantially affect the operations of the Contractor, the agreement, subject to the provision in number 5.3, is to be reasonably adjusted under consideration of good faith. To the extent that this is not commercially justifiable, the Contractor is entitled to the right to withdraw from the agreement.

16.2. The Contractor is entitled to withhold its services or withdraw from the agreement, to the extent that it becomes aware of circumstances, according to which the purchaser is threatened to become insolvent, or, for other reasons, it is not willing or in the position to fulfil its payment obligation at the point in time of maturity.

#### 17. Limitation of actions

17.1. All claims of the purchaser, regardless of the legal grounds, are time-barred in 24 months. This does not apply to the extent that the law under § 438, para. 1, no. 2 BGB, and § 634a, para. 1, no. 2 BGB prescribes longer periods, and in cases of the injury to life, body or health, upon intentional, grossly negligent or fraudulent conduct or upon claims under product liability law.

17.2. The period of limitation commences upon the date of acceptance. If no acceptance was agreed, the period commences upon the date of delivery.

#### 18. Area of jurisdiction and applicable law

18.1. For all disputes directly or indirectly arising from the contractual relationship, the exclusive area of jurisdiction is the registered office of the Contractor. However, the Contractor is entitled to call upon a court with jurisdiction over the registered officer of the purchaser.

18.2. German law is applicable to the legal relationship in connection with this agreement.

#### 19. Binding force

If a provision of these terms and conditions should be or become ineffective or null and void, the validity of the remaining provisions is not affected by this. Rather, in any such event, the ineffective or null and void provision is to be interpreted, reinterpreted or replaced in such a way that the economic purpose pursued with it is achieved. This does not apply if adhering to the agreement would present an unreasonable hardship for one of the parties.