

These General Terms and Conditions of Sale, Delivery and Assembly
apply for all commercial operations of
NCA Container- und Anlagenbau GmbH (hereinafter „NCA“ resp. „Seller“).

These General Terms and Conditions are generally composed for legal transactions between companies. If they are exceptionally also used as a basis for legal transactions with consumers in terms of § 1 para. 1 section 2 of the Consumer Protection Act, Federal Law Gazette 140/1979 (BGBl), they shall apply only to the extent that they do not conflict with the provisions of the first main section of this Act. The United Nations Convention on Contracts for the International Sale of Goods, done in Vienna on April 11, 1980, BGBl. 96/1988, shall not apply.

1. Preamble

- 1.1. These General Terms and Conditions of NCA Container- und Anlagenbau GmbH will apply to any and all commercial operations between Seller and Buyer. Any changes or deviations therefrom must be agreed in writing. Any terms and conditions between the Seller and the Buyer that conflict with or deviate from these Terms and Conditions of Delivery shall be excluded and shall not be recognized unless the validity of individual provisions is acknowledged in writing by the Seller. The present Terms and Conditions of Delivery shall also apply if the contractual relationship between the Seller and the Buyer is executed without objection and without reservation in the knowledge that the Seller's Terms and Conditions of Delivery conflict with or deviate from the present Terms and Conditions of Delivery.
- 1.2. Contracts between the Seller and the Buyer are supplemented by these Terms of Delivery. The Buyer agrees that in case of doubt, the Seller's present terms and conditions of delivery shall be taken into account in the event that the Buyer uses the GTC, even if the Buyer's terms and conditions remain uncontradicted. Negotiations on the part of the Seller for the performance of the Contract shall not be deemed to be consent to contractual terms and conditions deviating from the present Terms and Conditions of Delivery.
- 1.3. The following provisions on the delivery of goods shall apply mutatis mutandis to services and assembly work.
- 1.4. All agreements between the Seller and the Buyer regarding the execution of this Contract shall be concluded in writing.
- 1.5. The present terms and conditions of delivery shall also apply to future transactions between the Parties, even if no explicit applicability has been agreed upon for future transactions.
- 1.6. Correspondence with the Seller shall be conducted exclusively with the Seller's sales department, quoting the order number. Agreements with other departments of the Seller require the explicit written confirmation by the sales department of the Seller, which must be in the form of an addendum to the agreement, in order to be legally effective.
- 1.7. The Buyer undertakes to maintain confidentiality with regards to the conclusion of the Contract. He may only name the Seller as a reference to third Parties with the Seller's written consent.
- 1.8. The Seller makes these General Terms and Conditions of Delivery the basis of the Contract and declares that the establishment of a contractual relationship is entered exclusively subject to these Terms and Conditions of Delivery and that the conclusion of a transaction without the application of these Terms and Conditions of Delivery or individual provisions stated therein is excluded for him, unless he expressly declares otherwise in writing.

2. Conclusion of Contract

- 2.1. The Contract shall be deemed concluded when the Seller has sent a written order confirmation after receipt of the order.
- 2.2. Amendments and supplements to the Contract shall require the written confirmation of the Seller in order to be valid. The Buyer's terms and conditions of purchase shall only be binding on the Seller if they are expressly accepted by the Seller.
- 2.3. If import and/or export licenses, foreign exchange permits or similar permits are required for the performance of the Contract, Buyer shall make all reasonable efforts to obtain the required licenses or permits in due time.

3. Product Information

- 3.1. Details and information contained in price lists and product documentation shall only be binding insofar as they are expressly referred to in writing in the offer or Contract.
- 3.2. If one party provides the other party, before or after the conclusion of the Contract, with drawings and/or technical documents relating to the work, these drawings and/or technical documents shall remain the property of the party providing them.
- 3.3. Any use, copying, reproduction, disclosure or communication to third Parties outside the intended purpose requires the consent of the other party.
- 3.4. The Seller shall provide information and drawings enabling the Buyer to commission, use and maintain the Plant free of charge at the latest at the time of acceptance. For this purpose, one copy shall be handed over in each case, unless otherwise agreed by Contract. The Seller shall not be obliged to provide workshop drawings for the Plant or for the delivery item or for spare parts.

4. Packing

- 4.1. Unless otherwise agreed in writing, prices are always exclusive of packaging. Packaging shall be done in a standard commercial way in order to avoid damage to the goods during transport to the specified destination under normal transport conditions. The costs of packing shall be borne by the Buyer.

5. Transfer of Risk

- 5.1. In the absence of an explicit delivery clause in the Contract, delivery shall be carried out "ex works" (EXW); the goods shall be ready for collection.
- 5.2. The risk of loss or damage to the delivery item will pass upon handover of the goods to the shipping company.
- 5.3. Any kind of risk of loss or damage of the delivery item not covered by items 5.1. or 5.2. shall pass to the Buyer upon acceptance of the work.
- 5.4. After the transfer of risk, the Buyer shall bear the risk of loss of or damage to the delivery item, unless any damage is due to intentional or grossly negligent conduct on the part of the Seller.

6. Acceptance

- 6.1. After completion of the delivery item, an acceptance test to determine whether the delivery item complies with the contractual obligations regarding acceptance shall only be carried out if this has been agreed in writing between the Parties.
- 6.2. The Buyer shall not be entitled to use the Work or any part thereof prior to acceptance. If the Buyer uses it nevertheless, it shall be deemed as accepted. An acceptance test shall not be carried out subsequently.
- 6.3. If the Parties have agreed that an acceptance test shall be carried out, the Seller shall notify the Buyer in writing of the readiness for acceptance of the Works or the Plant, specifying a date for the acceptance test, which shall be fixed in such a way that the Buyer has sufficient time to prepare for tests and, if necessary, to be represented; the date of the acceptance test will be fixed during normal working hours at the place of manufacture or at a place to be specified by the Seller.
- 6.4. The costs of the acceptance test shall be covered by the Buyer, except for the costs incurred by the Seller's personnel or representatives.
- 6.5. The Buyer shall provide all materials and aids required to perform the acceptance test, at its own expense. Arrangements, equipment as well as necessary personnel etc. shall also be made, set up or provided by the Buyer.
- 6.6. The acceptance test shall be deemed to have been carried out on the day on which it has been scheduled if the Buyer prevents it from being carried out or if the Buyer fails to meet its obligations as defined in Clause 6.5.
- 6.7. After the acceptance test has been carried out, the Seller shall prepare an acceptance test report and send it to the Buyer. If the Buyer does not participate in the acceptance test, is not represented or prevents it, the correctness of the acceptance test report can no longer be disputed.
- 6.8. If in the course of the acceptance test any defects are discovered which do not comply with the Contract, the Seller shall remedy any such defect within a reasonable period of time. Upon Buyer's written request, a new acceptance test as defined in item 6.3. may be required, unless the defects are minor or insignificant.

- 6.9. After successful performance of the acceptance tests, the Work shall be deemed as accepted. The Work shall also be deemed to have been successfully accepted if the Buyer fails to attend the acceptance date according to Clause 6.6, is not represented or otherwise prevents the acceptance test from being carried out.
- 6.10. If the Parties have not agreed on performing acceptance tests, the Work shall be deemed as accepted when the Buyer has received the Seller's written notice of completion.
- 6.11. Minor or insignificant defects which do not impact the performance of the delivery item or Work shall not constitute grounds for refusal of acceptance.
- 6.12. After acceptance of the delivery item or Work, the period of 1 year starts in which the Seller is liable for defects of the delivery item or Work. The period shall be shortened if the use of the delivery item or Work exceeds the agreed scope. In the event of a delay in acceptance, which is not attributable to the Seller, in the absence of a written agreement to the contrary, the period shall end at the latest 18 months after delivery; for the Seller's liability for defects in the same.
7. Delivery Time
- 7.1. In the absence of any written agreement to the contrary, the delivery period shall commence on the latest of the following dates: a) the date of the order confirmation; b) the date of fulfillment of all technical, commercial and financial requirements incumbent upon the Buyer under the agreement; c) the date on which the Seller receives an advance payment to be made prior to delivery of the goods and/or a security for payment to be issued or otherwise opened.
- 7.2. The Seller shall be entitled to make partial and advance deliveries.
- 7.3. If it is foreseeable that the Seller will not be able to meet the delivery deadline or the acceptance deadline, the Seller shall immediately notify the Buyer thereof in writing, stating the reasons for the delay and indicating the expected acceptance date.
- 7.4. If a delay arises due to force majeure, due to reconstruction work, among other things, due to changes required by a change in the law or regulations, due to changes at the request of the Buyer, due to non-compliance by the Buyer with contractual obligations, in particular non-compliance with payment obligations or obligations to cooperate, or due to any other reason attributable to the Buyer, the Seller shall be entitled to a reasonable extension of the acceptance period.
- 7.5. If the Seller is responsible for the delay, the Purchaser may either demand performance or, after granting a reasonable period of grace, declare rescission of the Contract in respect of that part of the Works which, owing to the delay by the Contractor, cannot be used as intended.
- 7.6. If the period of grace provided for in Clauses 7.4. or 7.5. is not used due to the Seller's fault, the Buyer may withdraw from the Contract by written notice with respect to all goods or parts of the delivery item not yet delivered. The same shall apply to goods or parts already delivered but which cannot be reasonably used without those still outstanding.
- 7.7. If the Buyer has not made the contractually owed payment or other performance at the expiry of the delivery period or at the expiry of the grace period, the Seller may declare its withdrawal from the Contract by means of a written notice. In this case, the Buyer shall, at the Seller's request, return to the Seller at its own cost and risk any goods already delivered and shall compensate the Seller for any depreciation in the value of the goods that has occurred and reimburse the Seller for all justified expenses that the Seller has had to incur for the performance of the Contract, in particular also those for goods that are still finished or have been processed but have not yet been delivered.
8. Retention of Title:
- 8.1. The delivery item shall remain the property of the Seller until the complete fulfillment of all contractually agreed financial obligations by the Buyer.
- 8.2. The Seller may visually indicate its title on the delivery item.
- 8.3. At the request of the Seller, the Buyer shall fully support the Seller in efforts to protect the manufacturer's title to the delivery item.
- 8.4. In the event of execution or other claims, the Buyer shall be obliged to take measures that lead to the preservation of the Seller's right of ownership, in particular to point out the Seller's right of ownership and to notify the Seller immediately.
- 8.5. In justified cases, in particular in the event of default in payment by the Buyer, in the event of justified doubts as to the financial standing of the Buyer or the viability of the purchase price claims as well as in the event of an application for or the actual opening of insolvency, reorganization or similar proceedings, the Seller shall be entitled to assert the agreed retention of title in accordance with the contractual and statutory provisions and, among other things, to prohibit any further processing/manufacturing, combination/mixing/blending and/or resale of the deliveries or co-ownership shares subject to retention of title. The Seller shall be entitled to prohibit the Buyer from any further treatment/processing/mixing/blending and/or resale of the deliveries or co-ownership shares subject to retention of title and/or to retrieve the same at the expense and risk of the Buyer and, if necessary, to enter the Buyer's premises for this purpose and to collect the claims from resale itself and to realize them on account of payment.
9. Price
- 9.1. Unless otherwise agreed, prices shall be ex Seller's Works excluding loading and packaging and shipping and in particular excluding assembly.
10. Payment
- 10.1. Unless otherwise agreed, payments shall be made within 30 days after invoicing in such a way that 1/3 of the price is paid upon conclusion of the Contract, 1/3 when the Seller notifies the Buyer that the delivery item or the essential part of the delivery item is ready for shipment, and 1/3 upon arrival of the delivery item at the recipient's location.
- 10.2. The place of performance of the payment is the Seller's registered office.
- 10.3. The Buyer shall not be entitled to withhold payments due to any warranty claims or defects. A set-off with any counterclaims is also not possible, unless they are claims recognized by the Seller or established by a court.
- 10.4. In the event of the Buyer's default in payment, the Seller shall be entitled to charge default interest from the due date at the rate of 9.2 percentage points above the rate of the marginal lending facility of the European Central Bank and collection costs at the rate of 1% of the amount for which default interest is due.
- 10.5. In the event of the Buyer's default in payment or failure to provide security in due time, the Seller may also, after notifying the Buyer in writing, withhold the performance of its own contractual obligations until the payments have been received or the security is provided.
- 10.6. In the event of a delay in payment of more than 3 months, the Seller may withdraw from the Contract, demand interest as well as reimbursement of the collection costs as defined in item 10.4 and assert a claim for damages.
- 10.7. In the event of the existence of the conditions for the initiation of insolvency proceedings against the Buyer's assets, the Seller shall be released from any obligation to further performance of the Contract and warranty and may, at its option, withdraw from further performance of the Contract or from the entire Contract. The same shall apply to judicial or extrajudicial composition, reorganization and similar proceedings.
11. Assembly
- 11.1. If the assembly of the delivery item is expressly agreed in the Contract, the Seller shall provide the drawings and, if necessary, instructions for the assembly of the delivery item.
- 11.2. The Buyer shall carry out preparatory work in due time so that the conditions necessary for the assembly and proper use of the delivery item are met.
- 11.3. The Buyer shall carry out the preparatory works, if necessary, in accordance with the Seller's drawings and instructions.
- 11.4. The Buyer shall ensure that the Seller's personnel is able to start and perform the assembly work in accordance with the agreed schedule. The assembly work shall be carried out during the Seller's usual working hours.
- 11.5. The Buyer shall inform the Seller in writing, prior to the commencement of the work, of all relevant safety regulations applicable at the place of installation and shall ensure the necessary safety by taking protective measures.
- 11.6. The Seller's personnel shall be provided with accommodation and meals in the vicinity of the assembly site (max. distance 20 km) at the Buyer's expense for the duration of the assembly activities.
- 11.7. The Buyer shall provide the Seller free of charge with all equipment, machines, tools, etc. required for the assembly, which the Seller shall notify the Buyer of at least 1 month before the start of the assembly.
- 11.8. The Seller shall also be provided with adequate office space at the place of installation free of charge. These shall be equipped at least with telephone and internet connection.
- 11.9. At the Seller's request, the Buyer shall provide, free of charge, auxiliary staff and personnel for the assembly work in a reasonable manner.

- 11.10. Buyer shall support Seller free of charge with the import and export of Seller's equipment, tools or similar utensils, in particular with regards to customs formalities.
 - 11.11. Each party shall designate a responsible, authorized and representative person for the installation work, who shall be unrestrictedly present at or near the installation site during the installation work.
 - 11.12. If the Buyer is unable to fulfill its obligations as defined in item 11 or is unable to fulfill them in a timely manner, it shall notify the Seller thereof without undue delay.
 - 11.13. If the Buyer does not or not completely fulfill its obligations as defined in item 11, the Seller may fulfill the Buyer's obligations itself and at its own discretion at the Buyer's expense or have them fulfilled. However, it may suspend its obligations to perform the Contract in whole or in part if the Buyer has been granted a reasonable period of time to perform its obligations beforehand and this period of time has expired.
 - 11.14. In the event of delays that are within the sphere of the Buyer, the Seller shall be compensated for any additional costs. Likewise, Seller may claim additional costs in a reasonable amount if work is performed on Sundays, holidays or outside Seller's regular business hours.
 - 11.15. Upon completion of the assembly work, any assembly obligation and acceptance of the Work shall be deemed to have been fulfilled.
12. Warranty - Liability
- 12.1. The Seller warrants the Work to be free of defects at the time of acceptance.
 - 12.2. He shall be liable for defects in the Work resulting from a defect in design, material or workmanship.
 - 12.3. The Seller shall only be liable for such defects that occur under the contractually intended operating conditions and during proper use of the delivery item or Work.
 - 12.4. No liability shall exist for defects based on materials provided by the Buyer or a design prescribed or specified in more detail by the Buyer.
 - 12.5. The Seller shall not be liable for defects caused by circumstances occurring after the passing of risk, such as defects due to poor maintenance, defective repair by the Buyer or defects occurring due to modifications without the Seller's written consent. Also for normal wear and tear or deterioration, the Seller naturally assumes no liability.
 - 12.6. Liability for defects within the meaning of Clause 12.2 shall be limited to defects in the Work occurring within one year after acceptance, with the period being reasonably shortened if the use of the Work exceeds the agreed scope. If acceptance is delayed for reasons attributable to the sphere of the Buyer, the Seller's liability for defects shall end no later than 18 months after delivery.
 - 12.7. The Buyer may only invoke item 12 if he immediately notifies the Seller in writing of any defects that may have occurred. The presumption rule iSd § 924 ABGB is excluded.
 - 12.8. The Seller must be notified of a defect in writing within 2 weeks of the defect becoming known. The notice of defect shall describe the defect in detail. If the Buyer does not notify the defect in accordance with the provision, he shall lose his warranty right.
 - 12.9. If a defect could cause damage, the Seller shall be informed immediately in writing. The Buyer shall bear the risk for any damage resulting from failure to comply with the obligation to inform. The Buyer shall take reasonable precautions and measures to minimize the damage and, if necessary, follow the Seller's instructions.
 - 12.10. The Seller, informed in accordance with item 12.7. must, if there are remediable defects, at its discretion a) repair the defective goods on site; b) have the defective goods or defective parts returned and repaired accordingly, c) replace the defective parts or goods;
 - 12.11. The return to the Seller shall be at the expense and risk of the Seller. The return of the improved or exchanged delivery item shall be at the expense and risk of the Buyer.
 - 12.12. In case of replacement of the defective parts or goods, the defective parts or goods shall be returned to the Seller by the Buyer at its own risk and expense and shall in any case become the property of the Seller upon receipt.
 - 12.13. Improvement or rectification of defects by the Buyer itself shall only be permissible with the Seller's written consent, otherwise the Buyer shall lose any warranty rights or rights to rectify defects. The costs of a self-improvement have to be borne by the Buyer in any case.
 - 12.14. The Seller shall also have no warranty obligation for defects that occur during normal use in compliance with the operating conditions or for ordinary wear and tear. No warranty obligation shall exist in particular for defects based on improper maintenance, servicing or on repairs or modifications carried out by a person other than the Seller.
 - 12.15. For those parts of the goods which the Seller has obtained from the sub-supplier prescribed by the Buyer, the Seller shall be liable only within the scope of the warranty claims to which it is itself entitled against the sub-supplier.
 - 12.16. If a defect is improved on site, the Buyer shall, at its own expense, provide for access to the Work to be improved and for any interventions with respect to equipment which is not part of the Work.
 - 12.17. If the Buyer complains about a defect and it turns out that no defect can be detected, the Buyer shall reimburse the Seller for all costs and expenses incurred by the Seller as a result of the complaint.
 - 12.18. If a repair fails, the Buyer may demand a reduction in the value of the Contract price in the amount corresponding to the reduced value of the Work, but not exceeding 15% of the Contract price. In such a case, however, the Buyer may also withdraw from the Contract by written notice with respect to that part of the Work which cannot be used as intended due to the defect. In this case, the Buyer shall be entitled to compensation for its loss up to a maximum of 15% of the part of the Contract Price corresponding to the part of the Work in respect of which the Contract was terminated.
 - 12.19. The Seller's liability for defects in any part of the Work shall be limited to two years from acceptance, or at the latest two years from delivery or possible assembly.
 - 12.20. The Seller shall not be liable for any damage caused by the defect, such as loss of production, loss of profit, loss of use, loss of Contracts or indirect or consequential damage.
 - 12.21. No liability shall exist for damage to property caused by the factory after acceptance or delivery. The Buyer shall fully indemnify and hold the Seller harmless against any claims for damages by a third party against the Seller, if such damages are based on products manufactured by the Buyer or concern the sphere of the Buyer.
 - 12.22. In cases of slight negligence, any claim for damages shall be limited to 5% of the order amount, but not exceeding € 100,000.
 - 12.23. If the Buyer is confronted with claims for damages by a third party, which lead to a possible liability of the Seller, the Buyer shall immediately inform the Seller thereof.
 - 12.24. In the event of force majeure, each party shall be entitled to suspend its contractual obligations to the extent that the event of force majeure makes them impossible or disproportionately difficult. Cases of force majeure include labor disputes, war, fire, restrictions on energy requirements, export and foreign exchange restrictions, epidemics and pandemics, natural disasters, extreme natural events, acts of terrorism, and defective or delayed deliveries by subcontractors due to such circumstances.
 - 12.25. The party invoking force majeure shall inform the other party in writing and without delay of the occurrence and the expected end of the circumstance. In the event of failure to comply with this duty to inform, the other party may claim compensation for all additional costs incurred by it as a result of the breach of the duty to inform.
 - 12.26. If the Buyer is prevented from fulfilling its obligations under the Contract due to force majeure, it shall compensate the Seller for expenses incurred in securing and protecting the Work.
 - 12.27. If the circumstances as referred to in 12.24. last longer than 6 months, the other party may withdraw by written notice to the other party.
 - 12.28. Notwithstanding these provisions under item 12., the Seller may cease performance of its obligations under the Contract if it appears from the circumstances that the Buyer will not perform its obligations. In this case, the Seller shall immediately notify the Buyer thereof in writing.
13. Miscellaneous, disputes and applicable law
- 13.1. If individual provisions of these Terms and Conditions of Delivery are invalid, only the respective provision shall be invalid and this shall not affect the validity of the remaining provisions. In case of invalidity of a provision, a provision corresponding to the law and coming closest to the invalid provision shall be deemed agreed.
 - 13.2. The place of jurisdiction for all disputes arising directly or indirectly from the Contract shall be the court in Austria with local and subject-matter jurisdiction for the registered office of the Seller, unless otherwise agreed in writing between the Parties.
 - 13.3. These Terms and Conditions of Purchase and the entire legal relationship between the Buyer and the Seller shall be governed exclusively by Austrian law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.