

General Terms and Conditions

1 Interpretation

The definitions and rules of interpretation contained in this condition apply to these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.
Company: NAP carPARTS GmbH, Otto-Hahn-Straße 52-54, 48529 Nordhorn, Germany.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Goods: any goods (including any part or parts thereof) agreed to be supplied by the Company to the Buyer under the Contract.

Territory: any country to which the Buyer has advised the Company to supply the Goods.

Business Days: all days other than Saturdays, Sundays and public holidays in Germany.

- 1.1 A reference to a particular law is a reference to that law as it is for the time being in force taking as consideration any amendment, extension, application, or re-enactment and includes any subordinate legislation for the time being in force made under that law.
- 1.2 Words in the singular include the plural and words in the plural include the singular.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Headings in the Conditions shall not affect the interpretation of these Conditions.

2 Application of terms

- 2.1 Subject to any variation under Condition 3, the Contract shall be governed by these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply in any purchase order, order confirmation, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, order confirmation, specification or other document shall form part of the Contract by reason only of reference to such document in the Contract.
- 2.3 These Conditions apply to all sales made by the Company and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in these Conditions shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance by the Buyer of a quotation for the Goods from the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed accepted by the Company until the Company issues a written order acknowledgement or (if earlier) delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 All quotations are made on the basis that no contract shall be formed until the Company sends the Buyer an acknowledgement of order. Any quotation shall only be valid for a period of 14 days from its date unless previously withdrawn by the Company.

3 Variation of Terms

- 3.1 These conditions apply to all sales made by the Company and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 3.2 If the Buyer is in breach of any of these Conditions or the terms of any variation agreed pursuant to clause 3.1, the Company reserves the right to withdraw its consent to the variation and revert to these Conditions on notice to the Buyer.

4 Cancellation

- 4.1 No order which has been accepted by the Company may be cancelled by the Buyer unless agreed in writing by a director of the Company. Such agreement by the Company shall be subject to the Buyer indemnifying the Company in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company by reason of the cancellation.

5 Description

- 5.1 All samples, drawings, descriptions, specifications and advertisements issued by the Company and all descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described therein. They do not form part of the contract and this is not a sale on samples.

6 Delivery

- 6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place when the Goods leave the Company's premises whether carried by the Company, the Buyer or an independent carrier.
- 6.2 The Buyer shall be responsible for taking delivery of the Goods on receipt of notice from the Company confirming that the Goods are ready for delivery.
- 6.3 Any dates specified by the Company for delivery of the Goods shall be an estimate and the time for delivery shall not be affected by notice. In the absence of such dates, delivery shall be made within a reasonable time.
- 6.4 Subject to the other provisions of these Terms and Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses arising directly or indirectly from any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days.
- 6.5 If for any reason the Buyer fails to take delivery of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Buyer has not provided the necessary instructions, documents, licences or authorisations:
 - 6.5.1.1 the risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence); and
 - 6.5.1.2 the Goods shall be deemed to have been delivered; and
 - 6.5.1.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.6 The Buyer shall be responsible for providing at its own expense adequate and suitable equipment and manual labour for unloading the Goods.
- 6.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the terms of the Contract.
- 6.8 Each instalment shall be a separate Contract and the cancellation or termination of any Contract in relation to any instalment shall not entitle the Buyer to cancel or terminate any other Contract or instalment.

7 Non-delivery

- 7.1 The quantity of any consignment of Goods recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.
- 7.2 Any claim that the Company has failed to deliver the specified quantity or type of Goods must be notified to the Company in writing within five working days of the agreed delivery date. The Company shall not be liable for failure to give notice within this period.
- 7.3 The Company shall not be responsible for any Goods damaged or lost in transit.
- 7.4 Any period stated by the Company for delivery of the Goods is an estimate only and the time for delivery of the Goods is not of the essence.
- 7.5 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note for the pro rata Contract Price against any invoice for such Goods. The Company will not accept any debit notes from the Buyer.

8 Risk/title

- 8.1 The Goods shall be at the Buyer's risk from the time of delivery.
- 8.2 The ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 8.2.1 the Goods; and
- 8.2.2 all other sums due or to become due to the Company from the Buyer on any account whatsoever.
- 8.3 Until the ownership of the Goods passes to the Buyer, the Buyer shall:
- 8.3.1 hold the Goods on a fiduciary basis bailee for the Company;
- 8.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the property of the Company;
- 8.3.3 not to destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 8.3.4 maintain the Goods in a satisfactory condition and keep them insured on behalf of the Company for their full price against all risks to the reasonable satisfaction of the Company. The Buyer shall produce the insurance policy to the Company on request.
- 8.4 The Buyer may resell the Goods before the ownership has passed to the Buyer only on the following conditions
- 8.4.1 any such sale shall be in the ordinary course of the Buyer's business at full market value; and
- 8.4.2 any such sale shall be a sale of the property of the Company in the Buyer's own name and the Buyer shall deal as principal in making such sale.
- 8.5 The Buyer's right to possession of the Goods shall terminate cease if:
- 8.5.1 the Buyer becomes bankrupt or makes any arrangement or composition with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or goes into liquidation (whether voluntary or compulsory) other than a solvent voluntary liquidation for the sole purpose of reconstruction or amalgamation or has a receiver and/or manager, administrator or administrative receiver appointed over all or any part of its business; or any document is presented to any court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a Qualifying Floating Charge Holder or a resolution is passed or a petition is presented to any court for the winding up of the Buyer or for the making of an administration order in respect of the Buyer or any proceedings are made for the insolvency or possible insolvency of the Buyer; or
- 8.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied or obtained against its property or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer or becomes insolvent or the Buyer ceases to trade; or
- 8.5.3 the Buyer charges or encumbers in any way any of the Goods.
- 8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that title to the Goods has not passed from the Company.
- 8.7 The Buyer authorises the Company to recover from the Buyer any overdue payment for the Goods using any payment details held by the Company from time to time and without further reference or notice to the Buyer.
- 8.8 The Buyer grants the Company, its agents and employees at all times an irrevocable licence to enter any premises where the Goods are or may be stored for the purpose of inspecting the Goods or, if the Buyer's right to possession has ceased, recovering the Goods.
- 8.9 If the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right of possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 8.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights under this condition 8 shall survive.

9 Price

- 9.1 Unless otherwise agreed in writing by the Company, the price of the Goods shall be the price set out in the Company's published price list on the date of delivery or deemed delivery.
- 9.2 The price of the Goods shall be exclusive of any value added tax, customs duty, import duty and any costs or charges in respect of packing, loading, unloading, carriage and insurance, all of which shall be payable by the Buyer in addition to the price of the Goods.

10 Payment

- 10.1 Subject to Conditions 3, 10.2 and 10.7, the price of the Goods shall be payable in Euro on presentation of the Company's invoice unless an alternative currency has been previously agreed between the Company and the Buyer in which case the price of the Goods shall be payable in the agreed currency on presentation of the Company's invoice. Notwithstanding any variation to the terms of payment granted by the concession under Condition 3, all monies due shall be payable on demand.
- 10.2 Notwithstanding that the Company may either invoice and/or allow the Buyer to pay in a currency other than Euro, the Company reserves the right at any time by notice to the Buyer to convert all unpaid invoices into Euro at the rate of exchange quoted by the European Central Bank on the date of the invoice in which case the Buyer agrees to pay all amounts due in Euro..
- 10.3 If the Buyer receives an invoice which the Buyer reasonably believes includes an amount which is not properly due, the Buyer must notify the Company of the disputed amount within ten working days of receipt of the invoice ("Invoice Dispute Notification"). The Company shall not be liable to repay any overcharged amount if the Company has not received a valid Invoice Dispute Notification. Where the Buyer submits a valid Invoice Dispute Notification, the Buyer shall still be obliged to pay the relevant invoice before the due date of the invoice (and interest shall accrue in respect of non-payment). If the Company determines at its sole discretion that an invoice which is the subject of a valid Invoice Dispute Notification includes an amount which is not properly due, the Company will issue a credit note for any overpayment, together with interest on the overpayment at the rate of 4% per annum above the base rate of the European Central Bank, accruing on a daily basis until payment is made.
- 10.4 Time of payment is of the essence.
- 10.5 No payment shall be deemed to have been made until the Company has received cleared funds..
- 10.6 If the Buyer fails to make any payment to the Company on the due date:
- 10.6.1 all other sums payable to the Company shall become immediately due and payable; and
- 10.6.2 the Company may suspend performance of the Contract and any other contracts with the Buyer.
- 10.7 Notwithstanding anything to the contrary, all sums payable to the Company under the Contract shall become immediately due and payable on termination of the Contract.
- 10.8 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, reduction or otherwise unless the Buyer is in possession of a final court order requiring the Company to pay the Buyer an amount equal to any such deduction. The Company shall be entitled to set off any amount due to it from the Buyer under this Contract and/or any other contract between the parties against any amount due to it under this Contract and/or any other contract between the parties.
- 10.9 For the avoidance of doubt, any defect found in the Goods (once accepted by the Company) which does not affect the remainder of the Goods supplied under the Contract or which does not render the performance of the Contract materially different from that which was agreed shall not entitle the Buyer to withhold or delay payment for those Goods which are not affected by the defect.
- 10.10 If the Buyer fails to pay the Company any sum due under the Contract, the Buyer shall be liable to pay the Company interest on such sum from the due date at the rate of 4% per annum above the base rate of the European Central Bank from time to time, accruing on a daily basis until payment is made, whether before or after judgment.

10.11 The Company reserves the right to pass on to the Buyer any third party charges incurred by the Company as a result of the Buyer's collection of any outstanding debt.

11 Warranty

- 11.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 11.2 All warranties, conditions, guarantees and representations implied by statute, common law or otherwise are hereby excluded by Supplier to the fullest extent permitted by law.
- 11.3 The Company's liability under any warranty claim under Condition 11.2 is limited to 3 months from the date of the first invoice for the Goods in respect of all Goods manufactured by the Company unless otherwise agreed in writing.
- 11.4 If any of the Goods do not comply with the warranty in 11.2 and are within the period in 11.3, the Company will, at its option, offer to repair or replace the Goods or refund the price of the Goods pro rata to the Contract Price.
- 11.4.1 In the event of repair or replacement, the Company will pay the cost of despatching the Goods to the Buyer.
- 11.5 The Company shall not be liable for any breach of the warranty in condition 11.2 unless:
- 11.5.1 the Buyer gives written notice of the defect to the Company and, if the defect is due to damage in transit to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- 11.5.2 the Company is given a reasonable opportunity after receipt of the notice to inspect the Goods and the Buyer (if so requested by the Company) returns the Goods to the Company's place of business.
- 11.6 The return of goods for alleged emissions defects must be accompanied by:
- 11.6.1 the Company's official returns form, duly completed; and
- 11.6.2 a copy of the failure certificate issued by the MOT (or other authorised test centre) showing the gas analysis figures which led to the failure.
- 11.7 The Company shall not be liable for a breach of the warranty in condition 11.2 if:
- 11.7.1 the Buyer or the Buyer's customer continues to use the Goods after giving notice; or
- 11.7.2 the defect arises from the Buyer's failure to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 11.7.3 the Buyer alters or repairs the Goods without the Company's written consent; or
- 11.7.4 the fault arises from any cause beyond the control of the Company, including by way of example (but not limited to):
- 11.7.4.1 the application of exhaust paste to any part of the exhaust system in front of the catalytic converter or DPF; or
- 11.7.4.2 poor fitting of the catalytic converter or DPF to a vehicle, including by way of example (but not limited to) overtightening or failure to use spring bolts; or
- 11.7.4.3 external damage as a result of being struck by an object on the road.
- 11.7.4.4 use with a malfunctioning engine, engine control unit or turbocharger.
- 11.8 Notwithstanding Condition 11.3, the Company reserves the right to deal with a warranty claim under Condition 11.2 as it thinks fit if the Buyer has failed to pay to the Company any sums due under the Contract.
- 11.9 If the Company complies with Conditions 11.2 and 11.7 it shall have no further liability for breach of any of the warranties in Condition 11.2 in respect of such Goods.
- 11.10 Notification by the Buyer that he wishes to return the Goods for any reason other than a warranty claim must be given to the Company within 3 working days of the date of the invoice (unless otherwise agreed in writing by a director of the Company). The Company reserves the right to refuse a return of Goods under 11.10 or, at the Company's discretion, to issue a credit note for returns of Goods other than under warranty or incorrect delivery at a reduced value to cover costs including but not limited to packaging, carriage, loss of profit and administration costs.

12 Limitation of liability

- 12.1 Subject to Condition 6, Condition 7 and Condition 11 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 12.1.1 any breach of these Conditions;
- 12.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 12.1.3 any representation, statement or tort, including negligence, arising out of or in connection with the Contract.
- 12.2 All warranties, conditions and other terms and conditions implied by statute or common law (other than the terms implied by Condition 12) are excluded from the Contract to the fullest extent permitted by law.
- 12.3 Costs incurred in connection with the actual or planned contractual performance shall be limited to the contract price.
- 12.4 In no event shall the Company be liable to the Buyer for any loss of income or business or loss whether direct, indirect or consequential. Also excluded are all claims for any consequential loss (however caused, including without limitation claims by the Buyer in respect of labour costs) arising out of or in connection with the Contract.
- 12.5 It is the Buyer's responsibility to be aware of and to comply with all applicable laws, regulations, requirements and restrictions imposed by law or by governmental or other authorities or bodies relating to the possession, use, import, export or resale of the Goods. It is the Buyer's responsibility to ensure that the Goods are not exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable for any loss or damage (including without limitation fines, legal proceedings, loss of business, depletion of goodwill or claims for compensation) suffered by the Buyer as a result of the Buyer's or any other party's failure to comply with any such laws, regulations or requirements.

13 Installation

The Company is the manufacturer and/or supplier of the Goods supplied under or in connection with this Contract and does not provide installation services in respect of the Goods. To the extent permitted by law, the Company shall have no liability arising out of or in connection with the handling, fitting or installation of the Goods by the Buyer or its customers.

14 Assignment

- 14.1 The Company may assign the Contract or any part of it to any person, firm or Company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part thereof without the prior written consent of the Company.

15 Force majeure

The Company reserves the right to postpone the date of delivery or to cancel the Contract or to reduce the quantity of Goods ordered by the Buyer (without liability to the Buyer) if it is prevented or delayed in the conduct of its business by circumstances beyond the reasonable control of the Company including without limitation acts of God, governmental action, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not affecting the workforce of either party) or restrictions or delays affecting carriers or the inability or delay in obtaining supplies of adequate materials or equipment, fire, explosion, flood, epidemic, lock-outs, strikes or other industrial disputes (whether or not affecting the workforce of either party) or restrictions or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that if the event in question continues for a continuous period in excess of 90 days the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

16 General

- 16.1 Any right or remedy of the Company under the Contract shall be without prejudice to any other right or remedy of the Company, whether under the Contract or otherwise.



- 16.2 If any provision of the Contract is held by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable in whole or in part, that provision shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 The Company's failure or delay in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach or default by the Buyer of any provision of the Contract shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other provisions of the Contract.
- 16.5 If the Buyer enters into an agreement with a third party which results in a change in the Company's terms and conditions, the Company reserves the right to amend the prices and terms and conditions offered to the Buyer.
- 16.6 The Buyer must inform the Company if the Buyer is selling the Goods outside its territory.
- 16.7 The Buyer must ensure that it has adequate transport insurance for any Goods purchased Ex Works.
- 16.8 If this contract is translated and there is any discrepancy in the translation, the German language version shall prevail.

17 Governing Law & Jurisdiction

- 17.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by German law.
- 17.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the German courts in respect of any claim or matter arising out of or in connection with the Contract or these Conditions.

18 Communications

- 18.1 All communications between the parties in relation to the Contract shall be in writing and shall be delivered personally or sent by prepaid first class post or sent by fax or electronic communication (including email):
 - 18.1.1 (in the case of notices to the Company) to its registered office or to any change of address notified to the Buyer by the Company; or
 - 18.1.2 (in the case of notices to the Buyer) to the registered office of the addressee (if it is a company) or (in all other cases) to the address of the Buyer set out in any document which forms part of the Contract or to such other address as the Buyer shall notify to the Company.
- 18.2 Notices shall be deemed to have been received:
 - 18.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (excluding of the day of posting); or
 - 18.2.2 if delivered by hand, on the day of delivery; or
 - 18.2.3 if sent by fax or electronic communication on a Business Day before 4.00 p.m., on the date of transmission and otherwise on the next Business Day.

19 Export terms

- 19.1 For the purposes of these terms and conditions, exports are defined as the export of goods to those territories which are not subject to German VAT.
- 19.2 Unless the context otherwise requires, any term or expression defined or given a specific meaning by the terms of the INCOTERMS shall have the same meaning in these Conditions, but in the event of any inconsistency between the terms of the INCOTERMS and these Conditions, the latter shall prevail.
- 19.3 The provisions of this Condition 19 shall apply (subject to any special terms agreed in writing between the Buyer and the Company) notwithstanding any other provision of these Conditions.
- 19.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered Ex Works.

- 19.5 The Buyer shall be responsible for arranging for the Goods to be tested and inspected at the Company's premises prior to despatch. The Company shall not be liable for any claim in respect of any defect in the Goods which would have been apparent on inspection and which is made after despatch or for any damage in transit.
- 19.6 Unless otherwise required by the Company, payment of all sums due to the Company shall be made by an irrevocable letter of credit in a form acceptable to the Company opened by the Buyer in favour of the Company and confirmed by a bank in Germany acceptable to the Company within 14 days of despatch of the Goods unless otherwise agreed in writing by a Director of the Company.

These terms and conditions are drawn up in the German language. By signing these terms and conditions you agree that, notwithstanding any translation of these terms and conditions into a language other than German, the German language version shall prevail in the event of any conflict between the German language version and the translated version.

Agreement to NAP carPARTS GmbH Terms & Conditions

Signature:

Print Name:

Position:

Company:

Date: