

## **GENERAL TERMS AND CONDITIONS FOR DELIVERY AND SUPPLY OF BEUTLER NOVA AG**

Version **01.16**

### **1. General**

**1.1.** This contract shall be deemed to have been entered into upon receipt of Beutler Nova AG's written confirmation of order.

**1.2.** These terms and conditions for delivery and supply of Beutler Nova AG (hereinafter conditions) shall be binding if declared applicable in the proposal. They apply exclusively. Reference may be made to these conditions in both a framework agreement as well as in individual contracts. These conditions shall then be deemed to be an integral part of the respective contracts. Written individual agreements have precedence over these conditions. Any conditions stipulated by the customer, which are contrary to these conditions, shall only be binding if expressly agreed to by Beutler Nova AG in writing.

**1.3.** All agreements or legally relevant declarations of the parties must be expressed in writing to be valid.

**1.4.** If any provision of these conditions proves to be invalid in whole or in part, the parties shall replace this provision with one which has a legal and economic effect which is as similar as possible to the invalid provision. Otherwise, the effectiveness of these conditions remains unaffected.

### **2. Scope of Supplies and Services**

The supplies and services of Beutler Nova AG are exhaustively specified in the confirmation of order and any enclosed documents. Beutler Nova AG shall be entitled to make any changes leading to improvements, provided that these do not result in a price increase.

### **3. Plans and Technical Documents, Confidentiality**

**3.1.** Unless otherwise agreed, the content of brochures and catalogues is not binding. Data given in technical documents such as drawings, calculations, descriptions and illustrations shall only be binding if expressly stipulated as such.

**3.2.** If either of the parties makes available to the other any drawings or technical documentation concerning the equipment supplied or its manufacture, these shall remain the property of the party supplying them. This also applies to all industrial property rights and software rights. Upon delivery, Beutler Nova AG thus only provides the customer with a non-time-limited, non-exclusive, non-transferable, non-assignable, non-sublicensed right of use, to the extent that this is necessary for the use of the goods and services. This right of use is limited to these goods and services and is effective upon full payment of the contract price.

**3.3.** If either of the parties receives any drawings, technical documentation or other technical information, such material may not be used without the consent of the other party, except for the purposes of processing the proposal or the order, or the assembly, commissioning, operation and maintenance of the equipment supplied. Unless expressly authorized in writing by its

supplier, such material may not be made available to any third party, or used, copied, or reproduced for any purpose other than that for which it was originally provided or disclosed.

**3.4.** Any drawings, technical documents or other technical information supplied for the purposes of a proposal which does not result in an order, shall be returned to Beutler Nova immediately.

**3.5.** The customer undertakes to maintain secrecy about the content and existence of the offer/contract, and to keep secret all information of Beutler Nova AG gained in connection with this offer/contract or the contractual performance, and to use such information and inform its own employees and third parties only insofar as this is necessary for the processing of the offer/contract and to oblige such persons in turn to maintain confidentiality. Disclosure to third parties, in particular but not exclusively to those in competition with Beutler Nova AG, is not permitted. This non-disclosure obligation shall continue for a period of 5 years after the contract is awarded or in the event no contract has been placed for a period of 5 years after the offer has been placed.

### **4. Regulations in Force in the Country of Destination and Safety Devices**

**4.1.** At the latest when placing the order, the customer shall inform Beutler Nova AG as to the standards and regulations applicable to the equipment and services ordered, to the operation of this equipment and to the procedures for ensuring the health and safety of personnel. Failure to do so will result in the customer being charged for the costs incurred.

**4.2.** Unless otherwise agreed, the equipment and services supplied shall comply with the standards and regulations in force at the place of Beutler Nova AG's registered office. Additional or alternative safety devices shall be supplied only if there is an express agreement in this regard between the parties.

### **5. Prices**

**5.1.** All prices are net prices in CHF or EUR without VAT/sales tax. Unless otherwise agreed, prices are FCA (Incoterms 2010) excluding special packaging.

**5.2.** All additional charges, such as freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, all taxes, fees, levies, customs duties and similar, imposed in connection with the contract, shall be borne by the customer or refunded by Beutler Nova AG against adequate evidence.

**5.3.** Prices or extra charges for other Incoterms are not binding and may be increased in accordance with any rate which may come into effect.

**5.4.** Beutler Nova AG reserves the right to make appropriate price adjustments in the following cases:

- extension of delivery period due to one of the reasons set out in Clause 8.3., or
- change in the nature or scope of the supplies or services which are the subject of the contract, or
- at the customer's request, or
- subsequent changes to the legal or actual circumstances, or
- incomplete and/or faulty documents.

## **6. Terms of Payment**

**6.1.** Payments shall be made at the domicile of Beutler Nova AG according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like. Unless otherwise agreed, all invoices are due immediately and to be settled no later than on the 30th day after the invoice date.

**6.2.** The price shall be paid under the terms of the offer or the confirmation of order. Otherwise, the following terms of payment shall apply:

- 30% of the order value on conclusion of the contract, payable within 10 days
- 30% of the order value at the end of half the delivery period, payable within 10 days,
- 30% of the order value after preliminary acceptance, payable before delivery,
- 10% of the order value after acceptance, payable within 30 days.

**6.3.** The dates of payment shall be observed even if transport, delivery, assembly, set-up, or acceptance of the supplies or services is delayed or prevented due to reasons beyond Beutler Nova AG's control, or if non-essential parts are missing, or if additional work is found to be necessary following delivery, which does not prevent the use of the supplies or services.

**6.4.** If the deposit or agreed security are not provided in accordance with the terms of the contract, Beutler Nova AG shall be entitled to adhere strictly to the contract or to terminate it, and shall in both cases be entitled to claim damages.

**6.5.** If for any reason whatsoever the customer is in arrears with a payment, or if Beutler Nova AG is seriously concerned that payment will not be made in full or on the due date because of circumstances which arose since the contract came into force, without being limited in its legal rights, Beutler Nova AG shall be entitled to refuse further performance of the contract, and to retain deliveries ready for dispatch until the amounts due have been paid or Beutler Nova AG has received sufficient security. If this does not occur within a reasonable period of time, Beutler Nova AG shall be entitled to terminate the contract and to claim damages.

**6.6.** Should the customer fail to meet the agreed payment dates, payment shall be deemed in arrears without the need for a reminder and the customer shall be liable for interest of 8% as of the 31st day after the invoice date. The right to claim further damages is reserved.

**6.7.** Offsetting against counterclaims is not permitted.

## **7. Reservation of Title**

**7.1.** Beutler Nova AG shall remain the owner of all equipment until full payment has been received in accordance with the contract. The customer is obliged to cooperate in any measures necessary for the protection of Beutler Nova AG's title; in

particular, upon conclusion of the contract, the customer shall authorize Beutler Nova AG to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at the customer's cost. During the period over which title is reserved, the customer shall, at its own cost, maintain the equipment supplied and insure it in favor of Beutler Nova AG against theft, breakage, fire, water damage and other risks. The customer shall further take all measures to ensure that Beutler Nova AG's title is not prejudiced in any way.

**7.2.** If the laws of the country to which the equipment is delivered do not make provision for reservation of title, but do allow Beutler Nova AG to reserve other rights with respect to the equipment delivered, Beutler Nova shall be authorized to exercise all such rights.

**7.3.** The reservation of title shall have no effect upon the provisions with respect to the transfer of risk pursuant to Clause 10.

## **8. Delivery Period**

**8.1.** The delivery period shall commence as soon as the contract is entered into, upon completion of all official formalities such as, but not limited to, import, export, transit and payment terms, upon effecting all payments due with the order, upon providing any security agreed upon, and upon the settling the main technical points. The delivery period shall be deemed to be observed if within the period, the customer is advised that the equipment is ready to be dispatched.

**8.2.** Compliance with the delivery period is conditional upon the customer's fulfillment of all contractual obligations.

**8.3.** The delivery period may be reasonably extended:

- if the information required by Beutler Nova AG for performance of the contract is not received in time, or if the customer subsequently changes same;
- if hindrances occur which Beutler Nova AG cannot prevent despite using the required care, regardless of whether they affect Beutler Nova AG or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilization, war, revolution, serious breakdown in the factory, accidents, labor conflicts, late or deficient delivery of raw materials, semi-finished or finished products, the need to scrap important work-pieces, official acts or omissions by any state authorities or public bodies, natural catastrophes or acts of God;
- if the customer or a third party is behind schedule with work it is obliged to complete, or with performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

**8.4.** The customer shall be entitled to claim liquidated damages for delayed delivery if it can prove that the delay was caused by the sole fault of Beutler Nova AG and that the customer suffered a loss as a result of such delay. If substitute material can be supplied to accommodate the customer, the customer shall not be entitled to any damages for delay.

**8.5.** Damages for delayed delivery shall not exceed 0.3% for every full week's delay and shall in no case whatsoever exceed in total 3% of the contract price of the supplies or services in delay. No damages whatsoever shall be due for the first two weeks of delay.

**8.6.** After the maximum liquidated damages for delayed delivery is reached, the customer must grant Beutler Nova AG a reasonable extension of time in writing. If such an extension is

not observed for reasons within Beutler Nova AG's control, the customer shall have the right to reject the delayed part of the supplies or services. If partial acceptance is economically unacceptable for the customer, the latter shall be entitled to terminate the contract and to claim a refund of money already paid against the return of the deliveries supplied.

**8.7.** In the event that a specific date instead of a delivery period is agreed, such date shall correspond to the last day of a delivery period; Clauses 8.1. to 8.4. shall apply by analogy.

**8.8.** Any delay of supplies or services does not entitle the customer to any rights and claims other than those expressly set out in Clause 8. This limitation shall not apply to intent or gross negligence by Beutler Nova AG.

## **9. Packaging**

Packaging shall be charged separately by Beutler Nova AG, and shall not be returnable, unless otherwise agreed. However, if it is designated as being property belonging to Beutler Nova AG, it shall be returned by the customer, carriage prepaid, to the place of dispatch.

## **10. Transfer of the Benefit and Risk**

**10.1.** Transfer of the benefit and risk shall be in accordance with the agreed Incoterm, in the current version of the Incoterms, unless expressly agreed otherwise.

**10.2.** If dispatch is delayed at the request of the customer or due to other reasons beyond Beutler Nova AG's control, the risk shall pass to the customer at the time originally foreseen for delivery. From this moment on, the supplies shall be stored on the account and at the risk of the customer.

**10.3.** The provisions concerning the passing of benefit and risk pursuant to Clauses 10.1. and 10.2. shall be deemed valid even when the equipment supplied is commissioned or set up by Beutler Nova AG on the customer's premises.

## **11. Dispatch, Transport and Insurance**

**11.1.** Beutler Nova AG must be notified in a timely manner of any special requirements regarding dispatch, transport and insurance. The transport shall be at customer's own expense and risk. Any complaints in connection with the forwarding or transport shall be communicated by the customer to the last carrier immediately upon receipt of the supplies or shipping documents.

**11.2.** The customer shall be responsible for taking out insurance against risks of any kind.

## **12. Inspection and Acceptance of Supplies and Services**

**12.1.** In accordance with normal practice, Beutler Nova AG shall inspect the supplies and services prior to dispatching them. If the customer requests more extensive testing, this must be agreed upon separately and paid for by the customer.

**12.2.** The customer shall inspect the supplies and services immediately and notify Beutler Nova AG in writing of any deficiencies immediately, or no later than 5 days after discovering them. If the customer fails to do so, the supplies and services shall be deemed to be approved, subject only to hidden defects.

**12.3.** If notified of deficiencies pursuant to Clause 12.2., Beutler Nova AG shall remedy them as soon as possible, and the customer shall grant Beutler Nova AG the opportunity to do so. After any such deficiencies have been remedied, an acceptance test pursuant to Clause 12.4. shall be conducted at the request of the customer or of Beutler Nova AG.

**12.4.** The conduct of an acceptance test and the establishment of the conditions related thereto require a special agreement. The following shall apply:

- Beutler Nova AG shall advise the customer with sufficient notice that the acceptance test will be conducted so that the customer or his representative can attend.
- An acceptance report shall be prepared and signed by both the customer and Beutler Nova AG. This report shall either state that there was acceptance, or that there was acceptance with reservations, or that the customer refused acceptance. In the last two instances, the deficiencies shall be set out individually in the report.

**12.5.** In the case of minor deficiencies, particularly those which do not significantly affect the serviceability of the supplies or services, the customer shall not be entitled to refuse acceptance of the supplies or services and the signing of the acceptance report. Beutler Nova AG shall remedy any such deficiencies without delay.

**12.6.** Acceptance shall also be deemed to be completed:

- if the acceptance test cannot be conducted on the date scheduled, for reasons beyond Beutler Nova AG's control;
- if the customer refuses acceptance without being entitled to do so;
- as soon as the customer uses the supplies or services from Beutler Nova AG.

**12.7.** Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly contemplated under Clauses 12.4. and 13 (warranty, liability for defects).

## **13. Warranty, Liability**

**13.1.** The customer must give Beutler Nova AG the opportunity to inspect the complaint. If the customer refuses to do so, Beutler Nova AG shall be released from any warranty and liability for defective goods.

**13.2.** If defects were reported in time, Beutler Nova AG can choose whether to remedy the defect itself (remedy) or to supply defect-free goods as a substitute (replacement), or to refund to the customer a reasonable portion of the purchase price (reduction). Replaced goods shall be returned to Beutler Nova AG. If improvement or replacement is impossible or is rejected by Beutler Nova AG, or is not completed within a reasonable period for reasons stated by Beutler Nova AG, or if the defect is so substantial that acceptance of the delivery is not reasonable despite the refund of a portion of the purchase price, the customer has the right to withdraw from the contract. The right of withdrawal is excluded in the case of insignificant deviation from the agreed quality or insignificant impairment of the usability of the supplies and services. Beutler Nova AG is only obliged to refund that portion of the purchase price which was paid for the faulty performance.

**13.3.** In the case of costs incurred for improvement or replacement – to the extent that the complaint is justified – Beutler Nova AG shall bear the costs of the replacement part including shipment and appropriate de-installation and installation costs. Any further costs incurred by the customer shall be borne by the customer itself. Necessary expenses

incurred in connection with unjustified complaints regarding defects shall be borne by the customer.

**13.4.** Beutler Nova AG shall not be liable for damage to or defects in the goods due to unsuitable or incorrect use, faulty assembly or set-up by the customer, circumstances or influences within the responsibility of the customer, natural wear and tear, faulty or negligent treatment, unsuitable utilities, substitute materials, deficient construction work, unsuitable construction land, chemical, electrochemical or electrical influences, unless these can be attributed to a fault on the part of Beutler Nova AG.

**13.5.** No further warranty claims shall exist.

**13.6.** All warranty claims of the customer shall become statute-barred 12 months after delivery of the goods to the customer or performance of the service or, in the case of an acceptance inspection, after acceptance. In the case of remedy or replacement, the period of limitation shall be 6 months but shall run at least until expiry of the original limitation period for the supplies and services. In all cases, the warranty period shall end no later than 18 months after the beginning of the original warranty period following delivery of the supplies or performance of the service.

#### **14. Intellectual Property Rights**

**14.1.** Beutler Nova AG is not liable for claims arising from the infringement of industrial property rights or copyrights of third parties if the property right is or was owned by the customer.

**14.2.** The customer shall inform Beutler Nova AG immediately of any (alleged) intellectual property infringements or related risks which become known, and on demand – whenever possible – shall transfer the management of litigation procedures (including out-of-court settlements).

**14.3.** Beutler Nova AG is entitled – at its own choice – to obtain right of use for the product infringing property rights, or to modify it in such a way that it no longer infringes property rights, or to replace it with a similar product which does not infringe property rights. This also applies if the infringement of property rights has not yet been legally determined or recognized.

**14.4.** Claims of the customer shall be excluded if the customer himself is responsible for the property right infringement or if the products are manufactured in accordance with the specifications or instructions of the customer.

**14.5.** All further claims of the customer, or claims other than those regulated in Clause 14, relating to the infringement of property rights belonging to third parties are excluded, where legally permissible.

#### **15. Non-performance, Poor Performance and Consequences Thereof**

In all cases of poor performance or non-performance not expressly covered by these conditions, the customer is obliged to grant a reasonable additional period for the supplies or services thus affected by simultaneous warning that the contract will be terminated in the case of non-compliance. If this additional period lapses due to Beutler Nova AG's fault, the customer shall be entitled to terminate the contract with respect to the supplies or services executed, or certain to be executed, contrary to the terms of the contract, and to claim a refund of the payments already made for such supplies or services. In such a case, clause 17 shall apply with regard to any claims for damages by the customer and with regard to the exclusion of any further liability,

and any claim for damages shall be limited to 10% of the contract price for the supplies and services affected by the termination.

#### **16. Termination of Contract by Beutler Nova AG**

**16.1.** The contract shall be adjusted appropriately if unforeseen events considerably change the economic effect or the content of the supplies or services, or considerably affect the activities of Beutler Nova AG, or if performance subsequently becomes impossible. Insofar as such an adjustment is not economically feasible, Beutler Nova AG shall be entitled to terminate the contract or the parts thereby affected.

**16.2.** If Beutler Nova AG wishes to terminate the contract it shall, after having recognized the consequences of the event, immediately inform the customer; this applies even if an extension of the delivery period was first agreed to. In the case of termination of the contract, Beutler Nova AG shall be entitled to the payment of those parts of the supplies and services which were already delivered. Claims for damages by the customer based on such termination are excluded.

#### **17. Exclusion of Further Liability on the Part of Beutler Nova AG**

**17.1.** All cases of contract infringement and their legal consequences, as well as all claims on the part of the customer irrespective of the grounds on which they are based, are exhaustively covered by these conditions. In particular, all claims not expressly mentioned for damages, reduction in price, notice, termination or with drawal from the contract are excluded.

**17.2.** In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the supplies. This refers in particular, but is not limited, to loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage.

**17.3.** This exclusion of liability does not apply to unlawful intent or gross negligence on the part of Beutler Nova AG. Moreover, this exclusion of liability does not apply in the event that it is contrary to binding legislation.

#### **18. Assembly**

If Beutler Nova AG undertakes to assemble or supervise the assembly of goods, the General Conditions of Assembly of the Swiss Association of Machinery Manufacturers shall apply.

#### **19. Jurisdiction and Applicable Law**

**19.1.** The place of jurisdiction in the event of a dispute shall be the place at which Beutler Nova AG has its registered office. Beutler Nova AG shall, however, be entitled to bring legal action against the customer at the place where the customer has its head office.

**19.2.** The contract shall be governed by Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna) is not recognized under the present contract.

In the case of any dispute with respect to the interpretation of the contents of this contract, the German version of the contract shall be binding.