

1. Field of application

1.1. The legal relationships of NMH GmbH (Contractor) are regulated by the following contractual terms and conditions for commercial transactions and, insofar as is permissible, also in transaction with non-merchants.

1.2. Terms and conditions of the Client differing from them are only recognized as contract content if the Contractor expressly acknowledges them in writing.

2. Task

2.1. The Contractor shall complete the contractually agreed-upon goods within the prescribed deadline by processing and finishing the semi-finished goods made available by the Client. The Client shall pay the agreed remuneration for work effected according to contract.

2.2. The amount of finishing results from the amount delivered.

2.3. Where applicable, the Client makes available to the Contractor drawings, models and manufacturing documents according to which the contracted processing operations are to be carried out. Insofar as details of the semi-finished goods or goods to be finished are unclear to the Contractor, it shall obtain the information required for execution of the work from the Client.

2.4. Manufacturing documents, know-how and other materials made available by the Client are to be used by the Contractor solely for the processing and finishing of the contractual goods. Written documents and acquired know-how shall be treated confidentially by the Contractor and made available to third parties only if this is indispensable in terms of technical production and persons involved have been previously bound to confidentiality themselves.

2.5. The objects supplied and made available by the Client are to be protected by adequate measures against external influences, in particular theft and damage. The Client shall adequately insure the objects entrusted to the Contractor against the risks of loss theft, damage by fire, water, storm and other similar damages during the time in the custody of the Contractor.

3. Delivery, assumption of risk for the semi-finished goods, delivery of the processed products, delay in delivery, transfer of risk for the processed products

3.1. The Client shall deliver the semi-finished goods. No delivery costs will be charged to the Contractor.

3.2. Delivery times are strictly non-binding and approximate, insofar as nothing else has been agreed upon in writing.

3.3. Where non-compliance with agreed delivery periods results from force majeure, for example, mobilisation, war, riot or similar events, such as strike, lock-out, the periods will be appropriately extended.

3.4. If the Contractor is culpable of default in delivery, the Client can – insofar as it can prove that it has incurred resultant loss – demand damages for each complete week of delay of 0.5% of the net price for that part of the delivery which cannot be put into useful operation, up to a maximum, however, of 5%.

3.5. Both damage claims by the Client due to default in delivery and compensation in lieu of performance exceeding the limits specified at Article 3.4 are excluded in all cases of delayed delivery, even after expiry of any delivery deadline set for the Client. This will not apply in the event of mandatory liability for intent, gross negligence or injury to life, limb or health. The Client may only withdraw from the contract within the scope of statutory provisions, insofar as the delay to delivery is attributable to the Contractor.

3.6. Delivery of the processed goods is "ex works", insofar as the Contractor has not expressly agreed upon something different with the Client. The risk of accidental loss and accidental deterioration of the items processed by us passes to the Client upon transfer to, or collection by, the shipping agent. This also applies where we make partial deliveries.

4. Incoming goods inspection by the Contractor

4.1. The Contractor shall inspect the semi-finished goods upon arrival; in this inspection, incoming materials shall be checked only for identity and externally recognizable damage.

4.2. If the incoming goods inspection shows defects in the semi-finished goods delivered by the Client, or if defects emerge during processing and finishing operations, and the defects endanger or preclude proper fulfilment of the contract by the Contractor, then the Contractor shall promptly notify the Client of the defects. The Client shall substitute the defective semi-finished goods with defect-free goods, entitle the Client to sort out goods or grant a corresponding release.

4.3. Should concealed defects that prevent or unduly complicate production according to contract emerge only during processing and finishing operations, then the Contractor is entitled to compensation of expenses incurred until discovery of the defect. Further legal claims such as damages for QA effort, machine downtime or tool breakage are to be fully compensated by the Client.

5. Carrying out the processing operations

5.1. Processing will be carried out with due diligence so that the final result conforms to the quality features and intended purpose of the product.

5.2. If the semi-finished goods are not made available in time by the Client to the Contractor, the return delivery of the processed and finished final products is postponed by the same time period as the delay.

6. Contractor's warranty

6.1. The Client will check the final products returned by the Contractor and in doing so report any established defects to the Contractor. Obvious deviations shall be notified in writing by the Client to the Contractor within a limitation period of two weeks. Hidden defects will be notified in writing by the Client to the Contractor immediately after their discovery.

6.2. The Contractor's warranty is restricted to rectification. Further warranty claims – to the extent permitted by the law – are excluded.

6.3. The warranty period is 1 year from delivery of the finished products to the Client.



7. Damage claims

7.1. Damage claims by the Client on any legal grounds, in particular due to violation of obligations under the contract or liability in tort, are excluded.

7.2. This does not apply, where liability is mandatory, for example, in accordance with German Product Liability Law, in the event of wilful intent, gross negligence, as a result of injury to life, health or limb or as a result of the violation of fundamental contractual obligations. Damages for violation of fundamental contractual obligations are, however, limited to reasonably foreseeable, contractually-typical damages insofar as there is no wilful intent or gross negligence and liability does not result from injury to life, health or limb.

7.3. Insofar as the Contractor is entitled to claim damages, such claims become time-barred with expiry of the limitation period applicable pursuant to Article 6.3. The same applies for claims of the Contractor in connection with measures to prevent damages (e.g. recall campaigns). In the event of damages claims under the German Product Liability Law, the statutory limitation provisions apply.

8. Ownership protection

8.1. The parties agree that the semi-finished goods made available, as well as any technical equipment provided, are and remain the property of the Client. The Contractor obtains co-ownership of the intermediate and final products resulting from processing and finishing proportionally to the objective value of the semi-finished goods to the other processed and finished intermediate and final products at the time of processing.

8.2. The Client shall be considered the manufacturer in the meaning of Section 950 of the German Civil Code.

8.3. The Contractor shall safeguard the entrusted semi-finished goods, as well as any technical equipment, from third-party access at its own cost. The Contractor shall notify the Client promptly and in writing, in particular, of imminent or implemented enforcement measures, seizures or similar.

9. Remuneration

9.1. Prices are to be understood "ex works", excluding packaging and insurance. Packaging, where applicable, will be charged at cost price and cannot be returned.

9.2. Prices are subject to applicable VAT.

9.3. Payment must be made strictly net and within 14 days after receipt of the invoice, unless otherwise agreed.

9.4. Insofar as no fixed price agreement has been made, we reserve the right to make reasonable price modifications due to changes in cost of wages, materials and sales for deliveries occurring 3 months or more after conclusion of the contract.

10. Applicable Law and Place of Jurisdiction

10.1. All disputes arising in connection with contract processing are to be decided by the courts competent for the headquarters of the Contractor, insofar as the Client is a merchant, a legal entity under public law or a special fund under public law. The Contractor shall also be entitled to take legal action at the Client's seat.

10.2. The substantive law of the Federal Republic of Germany shall apply, under exclusion of UN Sales Law.



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