

GENERAL SALES CONDITIONS (“GSC”)

1. SCOPE OF APPLICATION

1.1 These GSC of the company NINZ S.p.a. (“Seller”) with registered office in Italy, 38061 Ala (TN), Corso Trento 2/A, with a fully paid up corporate capital of EUR 2,150,000.00, VAT Reg. No./Fiscal Code and registration number with the Trento Register of Enterprises IT01566290225, govern all sales contracts relative to its products (“Contracts”) concluded by the Seller and its customers (“Purchasers”) also in the future.

1.2 To these GSC, which are also published on the website www.ninz.it/en/legal, reference is made in the Orders (as defined below) and/or Order Confirmations (as defined below) and they are deemed to be expressly accepted and thus bind the Purchasers at the latest when the Purchasers have signed the Orders and/or Order Confirmations.

1.3 The Purchaser’s general purchase conditions shall not form part of the Contract and shall be deemed excluded and rejected by these GSC except where the Seller specifically approves them in writing. Moreover, any modification or integration of these GSC and to the Contract are valid only if agreed upon in writing.

2. CONTRACT CONCLUSION AND CONTENT

2.1 Any quotations however made by the Seller are not binding upon the Seller and merely constitute an invitation to the Purchaser to place an offer for the purchase of the products through an “Order proposal”. Each Order proposal shall be transmitted to the Seller by using the forms made available by the Seller which are to be properly filled in and signed by the Purchaser in all their parts. The Order proposal remains irrevocable for the Purchaser for 20 days as of the date of receipt of the same by the Seller, whereafter it remains in force as a revocable purchase offer.

2.2 A Contract shall be deemed to have been validly concluded only: (a) where the Seller expressly accepts the Order proposal (“Order Confirmation”); or (b) impliedly, in the exceptional absence of an Order Confirmation, if the Seller unequivocally starts to process the Order without the Seller having meanwhile received, after the expiry of the irrevocability period, an express written cancellation of the Order proposal.

2.3 It is agreed that any information relating to the products (such as weights, dimensions, specifications, prices, colours and other data) contained in catalogues, flyers, newsletters, advertisements, illustrations, or price-lists, of the Seller shall not take effect as terms of the Contract unless expressly referred to in the Contract. It is understood, for the avoidance of any doubt, that the Contract does not include installation unless it is otherwise expressly agreed in writing.

2.4 It is also agreed that the Purchaser is and always remains responsible for properly taking measures, for accurately filling in the forms referred to in paragraph 2.1 above, and for properly communicating the dimensions of the products therein included, it being understood that the Seller and/or its delegates/representatives shall always be deemed extraneous to it even if they (or whoever on their behalf) were present at the time when the measures were taken or have somehow participated.

2.5 The installation, use and maintenance instructions (“Installation, Use and Maintenance Instructions”) and the technical warnings (“Technical Notices”), which are also published on the website www.ninz.it/en/legal, are incorporated by reference into these GSC and the Purchasers are invited to read and observe them.

3. PRICE

3.1 The price for the sale of the products is specified in the Contract (“Price”) and includes solely the costs which are at the Seller’s charge according to the Contract. Should the Seller bear any costs and expenses which, according to the Contract, are for the Purchaser’s account (e.g. for transportation or insurance under FCA, FAS or FOB Incoterms® 2010), such sums may be added to any invoice or invoiced separately to the Purchaser.

3.2 Except as otherwise indicated in the Contract, the specified Price shall be understood plus VAT payable in accordance with the law. Where the VAT reverse charge mechanism (or other special regime, also in the field of exportations outside the territory of the EU) applies, the Purchaser shall timely provide the Seller with all information, documentation and declarations required by the law; otherwise, the Purchaser shall indemnify and hold the Seller harmless from and against any claims, bills, assessments, and demands, made by tax authorities as well as from any relevant damages (such as, e.g., legal costs).

4. PAYMENT

4.1 The Purchaser shall pay the Price, within the terms set forth in the Contract, by bank transfer to the bank account specified by the Seller in each invoice, it being understood that payment in cash or by bank checks or other negotiable instruments is excluded. Payment shall be deemed effected when the Price – without deductions or set-offs – has been credited to the bank account specified by the Seller. The Seller’s office shall always be considered as the place of payment. It is agreed that the bank charges shall be entirely borne by the Purchaser.

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4.2 In case of an even partial failure to pay any sums owed to the Seller when due, the Purchaser shall automatically be in default with automatic forfeiture of the benefit of the term in relation to possible future instalments and shall pay default interests and anything else provided by legislative decree 231/2002, beyond being obliged to compensate any further damages suffered by the Seller.

4.3 Moreover, always in case of failure to make payments as specified above, the Seller shall have the right to: (a) immediately suspend performance of the Contract (as well as performance of any other contract between the parties if the failure of payment indicates a worsening of the Purchaser’s financial position which might jeopardise the obtainment of payment); and (b) terminate the Contract if the Purchaser fails to pay within the term specified in the relevant warning letter.

4.4 The Purchaser acknowledges and accepts that the Seller grants, at its own discretion, a deferred payment only if the Seller’s insurance company covers the relevant pre-credit and/or credit risk and accepts that such deferment requires proper operation of the relevant coverage. It follows that if the insurance company revokes, at any moment, the coverage of the risk due to a reason other than the Seller’s breach of contract, the Purchaser shall lose its right to deferred payment and the Seller shall have the right, without prejudice to any other rights and remedies provided for by law or elsewhere in the Contract, to request anticipated payment or adequate guarantee.

4.5 Late and/or non-delivery of the products by the Seller (as well as failure by the Purchaser to take delivery) due to circumstances for which the Seller is not to blame shall not imply any prorogation and/or deferment of the payment terms set forth in the Contract.

4.6 The Purchaser shall not raise objections (also in relation to alleged defects or lack of quality of the products) so as to avoid or delay payment (*solve et repete*).

5. RESERVATION OF TITLE

5.1 The products shall, notwithstanding delivery and the passing of risk, remain the property of the Seller until full payment has been made and the Purchaser shall keep the Seller informed about the place in which the products are located from time to time.

5.2 The Seller shall do everything that is requested, and sign whatever is required, for ensuring that the reservation of title is valid and enforceable according to the law of the place in which the products are located from time to time. The Purchaser shall immediately inform the Seller in writing of any claim threatened or made, and proceedings threatened or initiated, which involve products owned by the Seller.

6. DELIVERY AND TRANSFER OF RISKS

6.1 Unless otherwise agreed in the Contract, delivery will be made FCA (at the Seller’s plant in 38061 Ala (TN), Corso Trento 2/A) Incoterms® 2010.

6.2 Irrespective of the Incoterms® rule agreed in the specific case, the Purchaser shall bear all risks of loss of, or damage to, the products as of the moment in which they have been loaded onto the means of transport at the Seller’s plant; the products are thus always travelling at Purchaser’s risk and danger.

6.3 Moreover, if the Contract provides that the Seller shall take charge of the transport of the products, the products may be unloaded during the entire workday, it being understood that unloading the products shall always be the responsibility, and occur at the costs and expenses, of the Purchaser who shall proceed without delay as soon as requested to do so by the Seller or by whoever on behalf of the Seller. The Purchaser shall duly indicate any time restrictions in the Order.

6.4 Any delivery times or dates indicated in the Contract, to be understood to start to lapse at the moment of the conclusion of the Contract, are always only approximate indications and are never binding, nor of the essence. The Seller shall inform the Purchaser of the actual delivery times or dates and the Purchaser shall in any case take delivery of the products without delay, it being understood that this applies irrespective of the Incoterms® 2010 rule agreed in the specific case.

6.5 If the Purchaser should not take timely delivery of the products for whatever reason (e.g. also in case the possible construction site should not be ready), the Purchaser shall be automatically in default and the risks and danger passed to the Purchaser (if it should not have passed earlier, for whatever reason, as set forth above). Moreover, the Seller shall have the right: (a) to contract for carriage at the Purchaser’s risk, costs and expenses and ship the products; and/or (b) claim any further damages such as the costs and expenses of the relevant deposit, storage or warehousing also with third parties, which the Seller will communicate, and which the Purchaser shall pay within the terms requested by the Seller as indicated in the relevant invoice.

6.6 In the cases set forth in the preceding paragraph and/or in case of termination of the Contract due to the Purchaser’s breach of contract, any payments which the latter may have anticipated and/or made will be kept by the Seller as liquidated damages; this applies without prejudice of the Seller’s right to claim any further damages.

GENERAL SALES CONDITIONS (“GSC”)**7. DOCUMENTATION AND COMPLIANCE**

7.1 The Seller will deliver the documentation which has been agreed and/or is required by the law only once the full Price has been paid, it being understood that the Purchaser shall be responsible, also towards third parties, for any related delay and/or omission to deliver the aforementioned documentation or use of the products in the absence of the same, by indemnifying and holding the Seller harmless from and against any claim and damage.

7.2 The preceding paragraph 7.1 shall apply and may thus be relied upon also if the Purchaser is subject to any insolvency or pre-insolvency proceedings (e.g. bankruptcy, scheme of arrangement with creditors, extraordinary administration etc., whatever their denomination used by the national legislator).

7.3 The Purchaser recognises and accepts that the products, their installation and use may be subject to requirements or limitations under laws, regulations and standards applicable where the products are resold or installed. The Seller does not warrant that the products comply with such requirements or limitations even where the Purchaser complies with the Installation, Use and Maintenance Instructions and Technical Notices mentioned above. The Purchaser shall thus: (a) ensure that the products, their installation and use comply with the laws, regulations and standards applicable where the products are resold or installed; and (b) obtain all necessary permits and licences and comply with all requirements and limitations applicable in connection with the resale or installation where they are resold or installed

8. WARRANTY, NOTICE OF DEFECTS, REMEDIES AND LIABILITY

8.1 The Seller gives the statutory warranties set forth in connection with defects and lack of quality (“Defects”) in due consideration of the following limitations and of what is elsewhere stated in the Contract. The Seller does not give any further warranty, neither of a statutory, nor of a contractual nature.

8.2 The aforementioned warranties do not operate, in addition to the cases in which the law excludes their operation or it is elsewhere excluded in the Contract, if the Defects are due: (a) to incorrect or improper transport, handling, deposit, storing, use, installation, conservation or maintenance, also having regard to what is indicated in the Contract and, in particular, in the Installation, Use and Maintenance Instructions and Technical Notices referred to above; and/or (b) to normal friction, wear and tear, obsolescence, corrosion or abrasion, also having regard to what is indicated in the Contract and, in particular, in the idem referred to above; and/or (c) in any other case of non-observance of the Installation, Use and Maintenance Instructions and Technical Notices referred to above.

8.3 Moreover, it is agreed that the Purchaser shall not have the right to claim potential Defects as long as the Purchaser has not performed its payment obligations in accordance with the Contract.

8.4 The Purchaser forfeits its warranty rights if it fails to give notice of the Defects, by recorded letter with return receipt or, in Italy, also by certified e-mail (PEC) to be sent to the PEC address commerciale@cert.ninz.it, not later than within 8 days as of receipt of the goods. The notice of defects shall include: (a) the production number of the product; (b) the date of the Order; (c) the date of delivery of the product; (d) a detailed description of all claimed Defects, documented by means of photographs and possibly video and in any case in a manner so as to enable the Seller straight from the beginning to exhaustively evaluate the claim also from the distance. Otherwise, the Purchaser shall compensate the Seller for any damages incurred (such as, e.g., possible travel costs and expenses) which the Purchaser may have avoided by cooperating in good faith.

8.5 Without prejudice to the aforesaid, the Seller shall have the right to inspect the allegedly defective products at the place in which they are located and they may not be returned to the Seller without its prior written authorisation. If such authorisation is given, the Purchaser may return the allegedly defective products at its care, costs and expense in accordance with the relevant instructions given by the Seller.

8.6 If the statutory warranty operates, and by way of express limitation of the same, the Seller’s obligation shall be limited, at its discretion: (a) to repair the product, it being understood that the Seller shall always have the right to repair products at its office and that any repair may be only made by the Seller or by a person that has been authorised by the same in writing; or (b) to replace the product.

8.7 All related costs and expenses (such as, e.g., for labour, travelling, transport, de-installation, re-installation, materials, etc.) shall be borne by the Purchaser also where the warranty operates.

8.8 Any other right or remedy of the Purchaser in connection with Defects are excluded to the maximum extent permitted and this also in connection with the right to claim damages which are not due to wilful misconduct or gross negligence.

8.9 The relevant action becomes in any case prescribed (time-barred) within one year as of delivery and the Purchaser waives its right of redress against the Seller for Purchaser’s potential warranty obligations towards consumers.

GENERAL SALES CONDITIONS (“GSC”)**9. TERMINATION AND FORCE MAJEURE**

9.1 The Seller shall have the right to terminate the Contract at any moment: (a) in case of a change of control (in the sense of article 2359 of the Italian Civil Code) over the Purchaser which the Purchaser shall communicate to the Seller in writing and in advance; and/or (b) if an application for bankruptcy or for any other insolvency or pre-insolvency proceeding (e.g. a scheme of arrangement with creditors, extraordinary administration etc., whatever their denomination used by the national legislator) has been filed against the Purchaser. This applies, in any case, without prejudice to the Seller’s right to suspend performance of the Contract if the financial position of the Purchaser is such to jeopardise the obtainment of what is owed by the Purchaser such as, e.g., in case of unpaid debts or protests against the Purchaser.

9.2 The Seller shall not be liable for non-fulfilment of any of its obligations if it proves that non-performance is due to a *force majeure* event beyond its control and which it could not reasonably be expected to have taken into account at the time of the conclusion of the Contract or to have avoided or overcome it, or its consequences. If the *force majeure* event continues for more than 3 months, either party shall have the right to terminate the Contract without notice.

10. INDUSTRIAL RIGHTS AND COPYRIGHTS (“IP Rights”)

10.1 The Seller remains the exclusive owner (or, as the case may be, licensee) of the IP Rights related to the products, whether they have been formally protected or not, and the Purchaser shall not register or however obtain, directly or indirectly, any relevant right (e.g. patent, trademark or domain name).

10.2 The Seller is not aware that the products infringe third party IP Rights but cannot warrant, and does not warrant, that the products do not violate such third-party rights.

11. MISCELLANEOUS

11.1 The Italian language version of these GSC shall prevail over any other language version.

11.2 The Seller’s liability is always limited to the Seller’s gross negligence or wilful misconduct, it being understood that no provision of these GSC or the Contract may be construed as excluding or limiting in advance the Seller’s liability for gross negligence or wilful misconduct.

11.3 If any provision of these GSC or the Contract (or parts thereof) is found to be invalid or unenforceable in any jurisdiction: (a) the validity and enforceability of such provision in any other jurisdiction shall not be affected, nor the validity and enforceability of the other provisions (or the remaining part of the affected provision) or the validity and enforceability of these GSC or the Contract as a whole; and (b) the invalid or unenforceable provision shall be substituted by a valid and enforceable provision reflecting to the greatest extent possible the essential purpose of the invalid or unenforceable provision.

12. GOVERNING LAW AND COMPETENT COURT

12.1 These GSC and relevant Contracts shall be governed by Italian law with the exclusion of the application of the United Nations Convention on the International Sale of Goods (CISG).

12.2 Any controversies arising out of or in relation to these GSC and relevant Contracts shall be submitted to the exclusive jurisdiction of the Courts of Rovereto (Italy).