

# Standard Terms and Conditions for the Sale of Goods (Export)

Note: This translation is for reference only. In case of any uncertainty the German text version shall apply

**NordCap**<sup>®</sup>

KÜHLEN.KOCHEN.SPÜLEN

## • 1. Preamble

These Standard Terms and Conditions for the Sale of Export Goods shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

The offer, order acknowledgment, order acceptance or sale of any products covered herein are conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the Buyer are objected to and will not be binding upon the Seller unless assented in writing by the Seller.

These conditions shall govern any future individual contract of sale between the Seller and the Buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## • 2. Definition and Interpretation of Terms

Throughout the contractual relationship as well as within these Standard Terms and Conditions the followings terms shall have the meaning as stated:

### Acceptance of Goods / products / delivery

The Seller shall have fulfilled all and any contractual obligation as soon as the Goods and / or products have been delivered to and accepted by the Buyer. If, however, the Goods and / or products prove not to be in conformity with the contract the Buyer shall notify the Seller immediately and return such Goods and / or product with an attached failure report to the Seller.

### Country of Origin

Wherever in any contractual agreement between Buyer and Seller there is a demand for naming a "country of origin" it shall always be in conformity with the contract to replace a wording "German origin" by "European Union origin" as Germany is a part of the single market "European Union".

### Day

Shall mean a period of twenty four hours ending at twelve midnight; if a period of consecutive days is mentioned throughout the contract this shall mean any day including business days as well as Sundays and any other bank holidays.

### Certificate of Origin

Shall name the place or country of origin of the merchandise and Goods supplied. Whenever there is a term of "German origin" used within the contract this wording shall mean that the merchandise, product, part of a product or delivered Goods will consist of parts being manufactured either in Germany only or partly within the European Union that Germany is part of. At any time the term "German origin" shall comprise Germany and any other country being part of the European Union.

### Product description

All technical documentation relating to the products and Goods submitted by the Seller prior or subsequent to the formation of the contract shall remain property of the submitting party.

Any technical documentation, drawing or any other technical information received by the Buyer shall not without the Seller's consent be used for other purpose than for the one they were provided for. They must not be used, copied, reproduced, transmitted or communicated to third parties without the Seller's prior consent.

### Product information

All information and data contained in any product documentation, quotation, contractual offers and price lists be it in electronic or any other form shall be binding to the extent that they are expressly included in the contract.

### Seller

The expression "Seller" wherever used includes every subsidiary and affiliate of the Seller to the intent and effect that each reference therein to the Seller shall be construed as a reference to the Seller and as a reference to each such subsidiary.

## • 3. Orders and Specifications

Seller's offers including any catalogue description and / or product specification shall be non-binding and non-committal unless otherwise stated. Orders submitted by the Buyer shall be deemed to be accepted by the Seller within seven days after submittal. Acceptance shall be in writing or through the supply of the Goods to the Buyer.

## • 4. Terms of Payment

In cash sales the purchase price shall be due upon receipt of the Goods (without any deduction and free of any costs). In all other cases the purchase price shall be due and has to be paid within 30 days upon invoicing.

In case of any special order the Seller shall be entitled to require a deposit being due upon confirmation of the contract and payable within 14 days.

In case of a commencement of insolvency proceedings against the Buyer any outstanding amounts have to be settled immediately.

## • 5. Delivery

Delivery periods are only approximate as long as no binding delivery time has been confirmed. The Seller meets any delivery deadline by dispatching the Goods or by reporting to the Buyer that the Goods are ready for dispatch.

## • 6. Transfer of Risks

Delivery terms will be expressly agreed upon in every contract of sale. Generally any deliveries made by the Seller will be in accordance with "Ex Works Incoterms 2010", namely ex works or ex warehouse as expressly described in every individual contract of sale.

According to "Ex Works Incoterms 2010" the Seller shall not be responsible of the transport of Goods, however, if the Buyer requests such transport, the Seller will take care of the Goods being packed and insured suitable for transportation whereby the Seller has the right to determine the type of shipment. The Seller shall be entitled to charge a flat fee of a minimum of 1.95 per cent of the net value of the Goods. Any other costs for any special services requested by the Buyer shall be charged accordingly.

If the Buyer personally collects Goods transfer of risk takes place upon handover, or in case of dispatch or shipment, when the Goods are handed over to the carrier or any transport company.

## • 7. Retention of Title

Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

The Seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods in which title remains vested in the Seller.

Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods properly stored, protected and insured.

Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the Buyer and third parties.

If the Goods are processed or reshaped by the Buyer and if processing is done with Goods that the Seller has no property in, the Seller shall become co-owner of the Goods. The same shall apply if Seller's Goods are completely reshaped and mixed with other Goods.

## • 8. Warranties and Exclusion Clauses

The Buyer shall examine the Goods and in doing so check every delivery in any respect. Any reclamation shall be notified within eight days.

The Seller warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the Buyer, will be free from design defects and suitable for the purposes intended by the Buyer.

The Seller shall not be liable for the Goods being suitable for a special purpose unless otherwise agreed upon.

Contrary to statutory provisions regarding the Seller's liability for defects the Seller is ready to remedy the defect to his discretion with regard to the products stated below and within the time limits set below:

For NordCap Kühltechnik productline additional 12 months for the compensation of material and labour costs.

For products of Koch- and Spültechnik productline additional 12 months for the compensation of material costs.

The above stated extended liability for defects shall apply for any products proved defective due to improper materials or workmanship.

This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

The Seller shall be entitled at the Seller's sole discretion to either replace the Goods free of charge or repair the Goods. If agreed upon the Buyer shall be entitled to remove and ship the Goods to the Seller with the Seller only bearing the original costs not including the Buyer's profit margin. The Seller shall not bear any costs for the re- installation of a product replacement.

## • 9. Miscellaneous Clauses

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof, and which shall become null and void from the date of the agreement is signed. This agreement shall be governed by and construed in accordance with German law. Preconditions and effect of the retention of title are subject to the law of the country where the item is stored.

Any dispute between the contracting parties shall be settled at the general place of the debtor, however, if the parties prefer to submit to arbitrage any dispute shall be settled in accordance with the 2012 ICC Rules of Arbitration.

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