

## **General Terms and Conditions**

### **of NAVAHOO GmbH with validity towards commercial customers**

#### **§ 1 Scope of Validity**

(1) All delivery, services and offers are exclusively made by NAVAHOO GmbH, Dickampstr. 8, 45879 Gelsenkirchen on the basis of these General Terms and Conditions. These are deemed to be a constituent part of all the contracts that NAVAHOO GmbH concludes with its contractual partners (hereafter also referred to as the "Customer") with regard to the deliveries or services it offers. They have validity for all future deliveries, services or offers made to the Customer even if they should not be separately agreed to in each individual case.

(2) The Customers can only be entrepreneurs in the meaning of § 14 of the German civil code (BGB). NAVAHOO GmbH does not conclude contracts with consumers in the meaning of § 13 BGB.

(2) The Terms and Conditions of the Customer or third parties are not applicable, this also being the case where NAVAHOO GmbH does not separately contradict their validity in each individual case. Even if NAVAHOO GmbH should refer to a letter that includes the Terms and Conditions of the Customer or a third party or refer to such, this cannot be construed as being a consent to the validity of such Terms and Conditions.

#### **§ 2 Offer and Conclusion of the Contract**

(1) All offers made by NAVAHOO GmbH are subject to change without notice in addition to them being non-binding if they are not explicitly designated as being binding or include a certain acceptance deadline. NAVAHOO GmbH can accept orders within a period of fourteen days of them having been received.

(2) The legal relationship between NAVAHOO GmbH and the Customer is solely governed by the contract that is concluded in writing including these General Terms and Conditions. These fully present all the agreements entered into between the parties to the contract with regard to the subject of the contract. Any verbal promises made by NAVAHOO GmbH prior to conclusion of this Contract are not legally binding and any verbal agreements entered into by the parties to the contract are replaced by the written contract, in as far as such should not explicitly state that they continue to be binding.

(3) Supplements and amendments to the agreements that have been entered into, including these General Terms and Conditions, are to be in writing in order for them to be valid. NAVAHOO GmbH employees are not entitled to conclude verbal agreements that deviate from these, the exception being members of the board of management or authorised signatories. The written form is also deemed to be a telecommunication transmission, especially by fax or email, as long as the copy of the signed document is transmitted.

(4) Information provided by NAVAHOO GmbH regarding the subject of the delivery or service (e.g. dimensions, the value in use, resilience, tolerances) and presentations of the same (e.g. drawings and illustrations) are only valid as an approximation as long as the usability for the contractually stipulated purpose should not necessitate an exact conformity. They are not deemed to be warranted features, but descriptions or labelling of the delivery or service. Standard deviations or such that are made on the

basis of legal provisions or technical improvements that have been made, are permissible in as far as they do not impair the suitability for the contractually intended purpose.

(5) NAVAHOO GmbH retains the ownership or copyright respectively in all offers and cost estimates it makes and in all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids that it makes available to the Customer. The Customer is not to make such available to third parties, whether in their entirety or parts thereof, or disclose such or have such used or duplicated itself or by third parties without the explicit consent of NAVAHOO GmbH. When requested to do so by NAVAHOO GmbH, it is to return all of these items to it and destroy any copies it has made, should it no longer require them in the regular course of business or should negotiations not result in a contract being concluded. The storage of data that is transferred by electronic means for the purpose of a customary data backup remains unaffected by the foregoing.

### **§ 3 Place of Performance, Shipping, Packaging, Passing of the Risk, Acceptance**

(1) Should nothing to the contrary be determined, the place of performance for all obligations from the contractual relationship is the legal domicile of NAVAHOO GmbH.

(2) The shipping method and the packaging are selected at the due discretion of NAVAHOO GmbH.

(3) The risk passes to the Customer upon the delivery item being handed to the freight forwarder, the carrier or other third parties that are responsible for the execution of the shipment (whereby the commencement of the loading process is decisive). This also has validity in cases where partial deliveries are made or NAVAHOO GmbH has also assumed responsibility for the provision of other services. Should the shipping or the handing over be delayed due to a circumstance for which the Customer is responsible, the risk is deemed to pass to the Customer as from the date on which the delivery item is ready for shipment and NAVAHOO GmbH has informed the Customer accordingly.

(4) The Customer bears storage costs incurred after the risk has passed. In the event of the items being taken into storage by NAVAHOO GmbH, the storage costs are deemed to amount to 0.25% of the amount that was invoiced for the stored items per expired week. The right is reserved to assert and provide proof of the incurring of higher or lower storage costs.

(5) NAVAHOO GmbH shall only insure the shipment against theft, breakages, transport damage, fire damage and water damage or other insurable risks at the express wish of the Customer, the Customer also bearing the costs incurred for this.

(6) Should an acceptance be necessary, the item is deemed to have been accepted if

- the delivery has been made,

- NAVAHOO GmbH has notified the Customer of this with reference being made to the assumed acceptance pursuant to this § 3 (6) and it has been requested to accept,

- two weeks have expired since delivery,

- the Customer has not refused acceptance within this time limit on a ground other than a defect that has been reported to NAVAHOO GmbH, the said defect rendering the use of the item impossible or substantially impaired.

## **§ 4 Delivery and Period of Delivery**

(1) Deliveries are made ex works or legal domicile of NAVAHOO GmbH.

(2) Deadlines and delivery and performance dates promised by NAVAHOO GmbH are always deemed to be approximations, the exception being cases where a fixed deadline or a fixed date are promised or agreed. Should shipping be agreed to, the periods of delivery and delivery dates refer to the date on which the item was handed to the freight forwarder, the carrier or another third party that has been commissioned with the transportation.

(3) Notwithstanding its rights from a default on the part of the Customer, NAVAHOO GmbH can demand a prolongation of the period of delivery and performance or a postponement of a period of delivery and performance for the same period in which the Contractor does not meet its contractual obligations towards NAVAHOO GmbH.

(4) NAVAHOO GmbH does not assume liability for an impossibility of the delivery or for delivery delays resulting from a force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational interruptions of all kinds, difficulties experienced with the procuring of materials or energy, transport delays, strikes, lawful lockouts, a lack of personnel, energy or raw materials, difficulties experienced with the obtaining of official permits, official measures or a non-delivery, incorrect delivery or delayed delivery by suppliers) for which NAVAHOO GmbH is not responsible. NAVAHOO GmbH is entitled to repudiate the contract should such events render a delivery or performance by NAVAHOO GmbH substantially more difficult, and the impairment is not of a temporary nature. Should the impairments be of a temporary nature, the time for delivery or performance shall be prolonged or they shall be postponed for the period of the impairment with the addition of a reasonable start-up period. Should it not be reasonably expected of the Contractor that it accepts the delivery or performance, he can repudiate the contract by providing NAVAHOO GmbH with a written declaration without delay.

(5) NAVAHOO GmbH is only entitled to make partial deliveries if

- the Customer is able to use the partial deliveries in the scope of the intended contractual use
- the delivery of the remaining ordered items is ensured and
- the Customer does not incur considerable additional expenditure as a result, the exception being if NAVAHOO GmbH should declare that it is prepared to accept these costs.

(6) Should NAVAHOO GmbH be in default with a delivery or performance or should it be unable to make a delivery or provide a performance, irrespective of the grounds, the liability of NAVAHOO GmbH is restricted to the payment of compensation pursuant to § 8 of these General Terms and Conditions.

## **§ 5 Prices and Payment**

(1) The prices are valid for the scope of the performance and delivery stated in the order confirmation. Additional or special services are invoiced separately. The prices are deemed to be in EUROS ex warehouse including the packaging, the statutory Value Added Tax, and in the case of export deliveries, customs duties, fees and other public duties.

(2) In as far as the agreed prices are based on the NAVAHOO GmbH list prices and the delivery is made after a period of four months of the contract being concluded, the NAVAHOO GmbH list prices that are valid at the time the delivery is made net of an agreed discount, either as a percentage or as a fixed amount.

(3) Invoiced amounts are payable within a period of ten days net should nothing to the contrary be agreed to in writing. The receipt of the payment by NAVAHOOG GmbH is decisive as regards the payment date. A payment by cheque is excluded should it not be agreed to separately in individual cases. Should the Customer not make a payment when it is due, the outstanding amounts shall incur interest at a rate of 5% per annum; the right is reserved to assert a claim for higher interest payments and additional compensation in the event of default.

(4) The setting off with counterclaims of the Customer or the retention of payments on the ground of such claims is only permissible in as far as the counterclaims are undisputed or have been finally determined.

(5) NAVAHOOG GmbH is entitled to only make outstanding deliveries or provide services against payment in advance or provision of security should it gain knowledge of circumstances after conclusion of the contract that could result in a substantial worsening of the creditworthiness of the Customers, this thereby placing the outstanding receivables held by NAVAHOOG GmbH by the Customer from the corresponding contractual relationship, at risk.

## **§ 6 Warranty, Material Defects**

(1) If you purchase items from us, your right to assert a warranty claim on the ground of a defect in the purchased item is statute barred one year from the date on which the risk is passed. The following claims are excluded from this provision:

- for compensation
- on the ground of a fraudulent concealment of defects
- on the ground of a possible guarantee
- for regress pursuant to §§ 445a, 478 BGB.

The statutory period of limitation has validity for these excluded claims. The longer term has validity for the benefit of the buyer in the event of a guarantee period possibly existing.

This period is also not valid for claims for compensation asserted by the Customer on the ground of death, physical injury or health impediments, or on the ground of intentional or gross negligent breaches of duty on the part of NAVAHOOG GmbH or its vicarious agents; such are statute barred conform with the legal provisions.

(2) The Customer or a third party named by it is to subject the delivered items to a careful inspection without delay. They are deemed to have been approved by the Customer with respect to apparent defects or other defects that would have been discernible had a careful inspection been carried out without delay, should NAVAHOOG GmbH not receive a written notification of defects within a period of seven days of the defect being detected; if the defect would have been discernible for the Customer under normal conditions of use, then this earlier period of time is deemed to be decisive for the commencement of the time limit for the submission of the notification of defects. A delivered item that is the subject of a complaint is to be returned to NAVAHOOG GmbH carriage paid when requested by NAVAHOOG GmbH. In the event of the notification of defects being justified, NAVAHOOG GmbH shall reimburse the costs incurred for the most inexpensive form of delivery; this is not valid should the costs be increased due to the delivered item being at a place other than the place of the intended use.

(3) In the event of the delivered items being affected by material defects, NAVAHOOG GmbH is obligated and entitled to initially remedy the defect or make a replacement delivery at its own discretion within a reasonable time limit. Should this be unsuccessful, i.e. due to impossibility, unreasonableness, refusal

or an unreasonable delay with regard to the remedy or the replacement delivery, the Customer can repudiate the contract or reduce the purchase price by a reasonable amount.

(4) Should a defect occur through the fault of NAVAHOO GmbH, the Customer can demand compensation subject to the conditions stated in § 7.

(5) In the event of products from other manufacturers being subjected to defects that NAVAHOO GmbH is unable to remedy for licensing or any other reasons, NAVAHOO GmbH can either assert its warranty claims against the manufacturer and supplier for the account of the Customer or it can assign the same to the Customer, as it chooses. Warranty claims against NAVAHOO GmbH only exist in connection with such defects under the other conditions and conform with these General Terms and Conditions, if the assertion of the aforementioned claims against the manufacturer and supplier before a court of law was unsuccessful or futile on the ground of insolvency proceedings, for example. The warranty claims concerned that the Customer can assert against NVAHOO GmbH are suspended for the duration of the litigation.

(6) The warranty lapses should the Customer modify the delivered item, or have it modified by third parties without the consent of NAVAHOO GmbH, this thereby rendering the remedying of the defect impossible or more difficult to an unreasonable extent. In such cases, the Customer is to bear the additional costs that are incurred for the remedying of the defect as a result of the modification having been made.

## **§ 7 Liability for Compensation on the Ground of Fault**

(1) The liability of NAVAHOO GmbH for compensation is, irrespective of the legal ground, especially for impossibility, default, a defective or incorrect delivery, a breach of contract, a breach of duty in connection with contract negotiations and tortious acts, restricted pursuant to this § 7 in as far as it concerns itself with fault.

(2) NAVAHOO GmbH does not assume liability for cases of simple negligence on the part of its organs, legal representatives or other vicarious agents in as far as this does not concern itself with an infringement of essential contractual obligations. Essential contractual obligations are deemed to be the obligation arising from the delivered item, it being free from defects of title or such material defects that affect its function or suitability for use to an extent that can no longer be deemed to be irrelevant, in addition to consulting, protection and due care obligations that are to serve to enable the Customer to use the delivered item in the contractual manner or serve to protect the life or limb of customer employees, or the protection of its property.

(3) In as far as NAVAHOO GmbH is liable for compensation on the grounds of § 7 (2), this liability is restricted to damages that NAVAHOO GmbH has foreseen as a possible consequence of a breach of contract at the time the contract was concluded or that it should have foreseen had it applied due diligence. Indirect damages and consequential damages that are a consequence of defects in the delivered item, are also only eligible for compensation in as far as such damage would have been typically expected when using the delivered item for the intended use.

(4) In the event of there being a liability for slight negligence, the obligation of NAVAHOO GmbH to pay compensation for property damages and any resulting pecuniary losses is restricted to an amount that is equal to the contractually agreed remuneration for each damaging event, even if this should be an infringement of essential contractual obligations.

(5) The aforementioned liability exclusions and restrictions are also valid for the benefit of the organs, employees and other vicarious agents of NAVAHOO GmbH to the same extent.

(6) The restrictions specified in this § 7 do not have validity for the liability of NAVAHOO GmbH on the ground of intentional conduct, warranted features, death, physical injury or health impediments or such pursuant to the German Product Liabilities Act.

## **§ 8 Reservation of Title**

(1) The following agreed reservation of title serves to secure all currently existing and future claims that NAVAHOO GmbH has/shall have against the Customer on the basis of the supply relationship that exists between the contractual partners with regard to textiles/clothing including balance claims in connection with a current account relationship that is restricted to this supply relationship.

(2) The goods that NAVAHOO GmbH delivers to the Customer remain the property of NAVAHOO GmbH until such time as all the secured claims have been settled in full. The goods and the goods that replace the same pursuant to the following provisions, these also being covered by the reservation of title, are hereafter referred to as "reserved goods".

(3) The Customer stores the reserved goods for NAVAHOO GmbH free of charge.

(4) The Customer is entitled to process and sell the reserved goods in the scope of correct business practice until such time as the enforcement case takes effect (9). Pledges and transfers of ownership by way of security are not permitted.

(5) It is agreed that should the Customer process the reserved goods, then the processing is to be carried out in the name and for the account of NAVAHOO GmbH as the manufacturer and that NAVAHOO GmbH shall be the direct owner – or should the processing be carried out using fabrics from various owners or should the value of the processed item be higher than that of the reserved goods –, it is to acquire co-ownership (fractional ownership) of the new item in the ratio of the value of the reserved goods to the value of the new item. In the event of NAVAHOO GmbH not acquiring such an ownership, the Customer already transfers its future property or co-ownership of the new item – in the aforementioned ratio – to NAVAHOO GmbH at this moment in time. Should the reserved goods be connected to other items in order to create a uniform item or should it be mixed in a manner that does not make a separation possible and one of the other items is deemed to be the main item, NAVAHOO GmbH transfers the proportional co-ownership to the Customer in the ratio stated in the first sentence, this assuming that the main item is owned by NAVAHOO GmbH.

(6) In the event of the reserved goods being resold, the Customer already assigns the resulting claim it has against the purchaser to NAVAHOO GmbH by way of security at this moment in time – should NAVAHOO GmbH have partial ownership of the reserved goods, this shall be proportional conform with the co-ownership share –. This also has validity for other claims that replace the reserved goods or that arise otherwise in connection with the reserved goods, e.g. insurance claims or claims arising from tortious acts in the event of loss or destruction. NAVAHOO GmbH revocably authorises the Customer to collect claims that have been assigned to NAVAHOO GmbH in its own name. NAVAHOO GmbH is only entitled to revoke this collection authorisation in an enforcement case.

(7) Should third parties access the reserved goods, especially in connection with a distraint, the Customer shall provide notification without delay that such are the property of NAVAHOO GmbH and it shall also inform NAVAHOO GmbH of this so that it is able to assert its ownership rights. Should the third party be unable to reimburse NAVAHOO GmbH with the court or out of court costs it incurs so that it can assert its ownership rights in connection with this, the Customer shall be held liable towards NAVAHOO GmbH.

(8) NAVAHOO GmbH shall release the reserved goods and the items or claims that replace it, in as far as their value exceeds the value of the secured claims by more than 50%. NAVAHOO GmbH selects the items that are to be released.

(9) NAVAHOO GmbH is entitled to demand a surrendering of the reserved goods should it repudiate the contract on the ground of a conduct of the Customer that is deemed to be a breach of contract – especially a payment default – (enforcement case).

## **§ 9 Final Provisions**

(1) Should the Customer be a businessman, a legal entity under public law or a special fund under public law, or should it not have a general legal venue in the Federal Republic of Germany, then the legal venue for all disputes arising from the business relationship entered into between NAVAHOO GmbH and the Customer is either the legal domicile of NAVAHOO GmbH or the legal domicile of the Customer, the choice being with NAVAHOO GmbH. It is the case however that legal action can only be taken against NAVAHOO GmbH at the legal domicile of NAVAHOO GmbH as its exclusive legal venue. Mandatory legal provisions or exclusive legal venues remain unaffected by this provision.

(2) The relationships entered into between NAVAHOO GmbH and the Customer are exclusively governed by the law of the Federal Republic of Germany. The terms of the United Nations Convention for Contracts on International Sale of Goods from 11 April 1980 (CISG) are not valid.

(3) Should the contract or these General Terms and Conditions include regulatory gaps, those legally valid provisions are deemed to have been concluded for the purpose of filling these gaps, that the contractual partners would have agreed to conform with the commercial objectives of the contract and the purpose of these General Terms and Conditions, had they recognised the existence of a regulatory gap.

**Version of the T&Cs: 09 March 2020**