

**GENERAL TERMS AND CONDITIONS FOR PURCHASE**  
**- GTC-PURCHASE-**  
Version: June 2006

**1. FIELD OF APPLICATION**

The following General Terms and Conditions for Purchase ("GTC-Purchase") shall be applicable for all Orders of NOVALED directed to Suppliers. The GTC-Purchase shall also apply for all future business transactions conducted with the Supplier, even if they are not particularly agreed again in repetition.

**2. OFFER, ORDER AND ORDER CONFIRMATION**

2.1 All offers and cost estimates of the Supplier shall be free of charge and without obligation for NOVALED.

2.2 Orders shall be effected by NOVALED. The Supplier shall confirm the Order of NOVALED within seven (7) calendar days as of receipt. If the Supplier should start with the provision of the performances from the Order within this period of time, this shall be regarded as a confirmation of the receipt of the Order of NOVALED, even if the Supplier has not expressly confirmed such receipt in accordance with the preceding sentence 1.

2.3 If an order confirmation of the Supplier should diverge from the contents of the preceding Order from NOVALED, or if the Supplier should confirm the Order belated, then NOVALED shall only be bound and committed, if NOVALED agrees to the deviation in writing, or to the belated order confirmation, which constitutes a new offer of the Supplier.

2.4 Divergent terms and conditions of business of the Supplier shall only be valid under the provision that NOVALED has specifically agreed to these in writing. This shall also apply for such cases, where the Supplier refers to its General Terms and Conditions in the Offer or in the order confirmation. Particularly the acceptance of deliveries or performances, as well as the performance of payments shall not constitute the consent of NOVALED to General Terms and Conditions of the Supplier.

**3. DELIVERY DATES, PARTIAL DELIVERIES AND CONSEQUENCES FOR DELAY**

3.1 The times for the fulfillment of the obligations of the Supplier designated in the Order shall be definite and of the essence. If no delivery date but rather a delivery time-period has been agreed, then the delivery time-period shall commence with the date of the ordering letter.

3.2 The Supplier shall be entitled to provide partial deliveries/services only with previous consent of NOVALED. Claims for payment shall, however, fall due for payment at the earliest as of the originally agreed delivery date.

3.3 If the Supplier should be in delay of delivery, then NOVALED shall, irrespective of other rights, be entitled to demand a penalty for breach of contract in an amount of 1.0% of the net order value per commenced week of the delay, but not more than 10% of such value. The assertion of other rights, including claims for higher damage compensation, shall remain unaffected; an asserted claim for a higher damage compensation shall be offset with an already paid penalty for breach of contract. The Supplier shall be entitled to prove, that NOVALED has incurred lesser damages, or no damages at all. If NOVALED does not reserve for itself the entitlement to the penalty for breach of contract at acceptance of the delivery or at the subsequent performance, then NOVALED shall nevertheless be entitled to assert the claim for the penalty for breach of contract until the final payment.

3.4 NOVALED shall, irrespective of other rights, be entitled to cancel the Order in part or as a whole, in as far as such Order is not carried out in accordance with the regulations as stipulated above.

**4. TERMS AND CONDITIONS FOR DELIVERY**

4.1 Delivery shall, subject to special agreements, be carried out "franco domicile", Monday thru Friday within the agreed business hours, in accordance with DDP, Delivered Duty Paid (in accordance with Incoterms 2000 of the International Chamber of Commerce), to the place of destination indicated by NOVALED. A delivery may be rejected if the delivery note does not contain the information for the Order required from the Supplier, particularly the indication of the order number and - if required - specific details regarding containers or other package-units, as well as if the net- and the gross weight have not been specified. NOVALED shall not be liable for a delay in payment, if a delivery note was not submitted, or if it is incomplete or illegible. The specified quantities must correspond with those in the Order. Irrespective of all other rights, NOVALED shall be authorized to return all premature and additional shipments to the Supplier at the expense and for the risk of the Supplier, and to demand the shipment of shortfalls.

4.2 The Supplier shall be obliged to observe the statutory prescriptions and the regulations of the administrative authorities in the fulfillment of the contract. The deliveries and services must meet the corresponding German and European prescriptions regarding safety, industrial health, accident prevention, waste, electrical appliances, and the VDE - standards, as well as the DIN requirements and, if required, the ISO- and EC-standards, and they must - as far as applicable - be provided with a declaration of conformity, the labeling in accordance with ElektroG and the CE - label. The Supplier shall include the safety devices and the certificates of inspection required according to such prescriptions.

**5. PRELIMINARY EXAMINATION**

5.1 With the accompanying documents, NOVALED shall check the delivered goods only with regard to identity and quantity, as well as for externally recognizable damages caused in transit. NOVALED shall notify the Supplier

of deficiencies of the delivery within an adequate period of at least 5 working days after having discovered such deficiencies in the course of proper and orderly business operations. The Supplier shall, in this respect, waive all rights to contest a delayed notification of defects (§ 377, German Commercial Code).

5.2 NOVALED shall, irrespective of other rights, be entitled to reject deliveries which do not correspond with the specifications of the Order, and to return this shipment to the Supplier at the expense and the risk of the Supplier.

**6. TRANSFER OF TITLE, TRANSFER OF RISK**

6.1 The delivery or the services shall be delivered to or provided at the address indicated by NOVALED for the account and at the risk of the Supplier, and it shall, if applicable, be properly and orderly packed for transportation, carriage paid to destination of delivery. The risk of coincidental loss or of coincidental deterioration of the delivery shall pass on to NOVALED only with the receipt of the delivery at the agreed place of performance by NOVALED or by the forwarding agent engaged by NOVALED, or after Final Acceptance of the delivery, depending on which time is the latter, even if NOVALED has agreed to assume the freight charges.

6.2 With the transfer of risk at the place of performance, or with the handing over to a forwarding agent particularly engaged by NOVALED, NOVALED shall acquire the title of property to the product without reservation of any rights for the Supplier.

**7. PRICES, INVOICES AND TERMS OF PAYMENT**

7.1 The prices indicated in the Order are fixed prices; The prices agreed shall compensate for all performances, which belong to the contractual performances in accordance with the Order, with the special conditions thereof and the annexes thereto, with the GTC-Purchase, and with the customs common in commercial transactions. They particularly include all costs for packing, customs, transportation, insurance costs, and all other charges and duties, such as - listing is not complete - license fees and all statutory charges and duties, as well as costs for delivery, the operational start-up, the acceptance of the equipment- or material documentation, as well as of the other documents, as indicated in the Order or in the GTC-Purchase, unless other provisions have been explicitly agreed in writing. The Supplier shall assume the disposal of all materials used in packing and transportation.

7.2 Invoices shall be sent to NOVALED as an original and as a copy of the invoice, and they shall - aside of the statutory components - contain error-free details regarding the order number, the ordered item, the place of delivery, the quantity of the items delivered, the number of the delivery note, the date of the delivery, and the prices, in addition to any possible surcharges. A separate invoice shall be prepared for every Order. Invoices shall be prepared indicating Euro as monetary unit, payments shall be effected exclusively in Euro.

7.3 Payments shall be effected, at the option of NOVALED either by transfer, or check, or bill of exchange, upon acceptance or receipt of the delivery and the forwarding of a valid invoice corresponding with the terms of the contract, as well as the handing over of all documents belonging to the scope of delivery, i.e. material tests, test reports, quality documents, or of other documentation. Provided that nothing else has been explicitly agreed in writing, NOVALED shall either pay within 14 days under deduction of 2% cash discount, within 30 days (net) without discount deduction. Payments shall not constitute the approval of the deliveries or performances as being in accordance with the provisions as stipulated in the contract.

**8. MATERIAL DEFECTS AND THE PROVISION OF SUBSTITUTES / REPLACEMENTS**

8.1 The Supplier shall ensure the careful and proper fulfillment of the contract, and he shall warrant the compliance with the predetermined specifications, as well as the quality and suitability of the delivery and performance for the intended use under customary conditions with regard to material, construction and design / workmanship, and of the documents belonging to the delivery (drawings, plans and the like). Suppliers' predetermined technical specifications shall be regarded as a adopted agreement for the composition of the object of the delivery or performance, which is incorporated into the contract. The Supplier shall render the services owed by contract by himself, autonomously, and completely in accordance with the latest state of the art in science and technology.

8.2 In as far as nothing else has been provided for in Section 8, the Supplier shall be liable in accordance with the statutory prescriptions, particularly with regard to deficiencies of the delivery, without this liability being restricted or excluded with regard to reason or the amount, and it shall indemnify and hold NOVALED harmless from claims of third parties in this respect.

8.3 NOVALED shall be generally entitled the right to choose the manner of subsequent performance. The Supplier may refuse the manner of subsequent performance chosen by NOVALED under the provisions of § 439, section 3 German Civil Code.

8.4 If the Supplier should not immediately start with the elimination of the deficiencies after having been request by NOVALED to do so, then NOVALED shall be entitled in urgent cases, particularly to ward off acute

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dangers, or for the avoidance of extremely high damages, to eliminate the ascertained deficiencies at the expense of the Supplier either by itself, or to have them eliminated by third parties, without requiring the previous stipulation of a term of additional respite.

8.5 Provided that nothing else has been agreed in writing, claims for material defects for deliveries and performances of the Supplier shall expire by limitation 30 months after delivery to NOVALED. In the case of a re-sale by NOVALED, the claims for material defects for deliveries and performances of the Supplier shall, in as far as nothing else has been agreed in writing, expire by limitation 30 months after delivery to the end-consumer, at the latest, however, 36 months after delivery to NOVALED. For contracts for work and labor, the limitation period shall be 30 months as of written Final Acceptance. If the delivery has been used for a building according to its usual manner of utilization, and it has caused the inadequacy of the building, then the extinctive prescription shall commence not until 5 years as of acceptance. The rights of NOVALED from § § 478, 479 German Civil Code shall remain unaffected. A limitation period of 10 years shall be valid with regard to defects of title.

8.6 If unsatisfactory deliveries are not taken back by the Supplier in spite of NOVALED having requested the Supplier to do so, then such deliveries may be disposed of at the expense of the Supplier, or they may be returned "freight collect" at the expense of the Supplier. The Supplier shall bear the risk for the return of unsatisfactory deliveries.

#### **9. PRODUCT LIABILITY**

If NOVALED is approached by a third party because of the defectiveness of the delivery of the Supplier, then the Supplier shall immediately indemnify and hold NOVALED harmless from these claims.

#### **10 RIGHTS OF THIRD PARTIES**

10.1 It is the responsibility of the Supplier, that the ordered item and the utilization thereof will not violate any rights of third parties at the place of use. The Supplier shall indemnify and hold NOVALED and its customers harmless, if they are approached before or out of court because of the infringement of proprietary rights. In the case of a lawsuit, the Supplier shall render assistance upon request. The Supplier shall furthermore replace and compensate all damages arising for NOVALED and/or its customers due to the fact that they have trusted in the free usability of the delivery/performance. The damage of a customer of NOVALED shall only be replaced by the Supplier in as far as the customer approaches NOVALED.

10.2 The Supplier shall not be liable, in as far as it has produced the delivery exclusively according to drawings and models of NOVALED, and it did not know, or did not have to know, that the production of this delivery constitutes an infringement of proprietary rights.

10.3 The Supplier shall, upon request, identify all proprietary rights which it uses in connection with the delivery. If the Supplier should detect the infringement of proprietary rights, then it shall inform NOVALED thereof without having been asked to do so.

#### **11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

11.1 Data, samples, documents, formulae and other technical documentations, regardless of the data carrier, programs or tools, technical notes and records, procedural methods and other technical-, scientific- and business know-how, as well as results obtained in connection therewith (referred to in the following as the "confidential information"), which have been provided to the Supplier by NOVALED, shall remain the intellectual property of NOVALED, and they shall be kept secret. Without the previous consent of NOVALED, the Supplier shall not reproduce the confidential information or inform third parties about it, or use it for its own purposes or for the purposes of third parties, but it shall rather use it only in its own organization to carry out deliveries to NOVALED, and it shall only make it accessible to such persons in its own organization, who have to have knowledge thereof in the context of the Order, and who have been obliged to secrecy in accordance with its regulation.

11.2 In as far as the Order, as a whole or in part, contains design work or the development of software or of substances, all results of such performances shall be the exclusive property of NOVALED. In as far as these results include proprietary rights, the Supplier shall assign and convey to NOVALED a non-exclusive, transferable license thereto, which is valid spatially on a worldwide basis and temporally for the legal duration of the proprietary rights. This license shall include the right to multiple duplication, distribution, amendment, adaptation, assignment and commercialization in any form and on any present or future data carrier. Any charges possibly arising due to this license shall be compensated and settled with the price for the Order.

11.3 All documents (e.g. drawings, illustrations, testing specifications), samples and models etc. which NOVALED makes accessible to the Supplier in the context of the business relations (including any existing copies, duplicates, excerpts and copies), shall remain in the property of NOVALED, and they shall, at any time or at the latest at completion of the business relations, upon the request of NOVALED and as NOVALED may select in its own discretion, either be returned to NOVALED, or be destroyed at the expense of the Supplier. The Supplier shall not have a right to retention in this respect.

11.4 The disclosure or revelation of confidential information and any conveyance of documents, samples or models shall not constitute any rights for the Supplier, to industrial proprietary rights, know-how or copyrights, and it shall not constitute an advance-publication or an advance right of usage as contemplated in the Patent Act or in the Industrial Property Act.

11.5 Without the consent of NOVALED, the Supplier may not make or arrange for any publications in connection with the Order or the installation. This shall also apply for the use as a reference.

#### **12. INSURANCES**

The Supplier shall effect and maintain a sufficient third-party insurance at its own expense for damages arising from rendered deliveries or performances. For the coverage of the product liability risks, the Supplier shall maintain an extended business liability insurance, which includes the insurance of product-asset damages (extended product liability insurance for personal injuries and property damages, including foreign damages and the recovery of recall costs), with a coverage amount of at least EUR 2,500,000.00 (two millions and five hundred thousand Euros per insured event). Evidence of the amount of insurance coverage shall be provided to NOVALED upon request. The scope of accountability and liability of the Supplier shall not be limited or restricted by the effecting of the third-party insurance and the provision of evidence thereof.

#### **13. CERTIFICATES OF ORIGIN AND EXPORT REGULATIONS**

13.1 Before the effecting of the delivery, the Supplier shall provide all certificates (e.g. certificates of origin), which NOVALED requires for the attainment of customs- or others privileges and for customs clearance as well as for all procedures, actions, etc. connected therewith.

13.2 If one of the obligations from 13.1 should be infringed, then the Supplier shall replace all damages arising there from for NOVALED and/or its customers, and it shall assume all other consequences.

#### **14. QUALITY ASSURANCE**

For the duration of the business relations, the Supplier shall be committed to maintain a Quality Management System DIN EN ISO 9000 pp., which must ensure an unobjectionable quality of the deliveries to NOVALED, and it shall monitor such system at regular intervals by means of internal audits, and it shall initiate the required measures immediately, if deviations should be established. NOVALED shall be entitled to inspect the Quality Assurance of the Supplier at any time after previous notification. The Supplier shall, upon request, grant NOVALED access to inspect the certification- and audit reports, as well as the test procedures conducted, including all notes, records and documents of examinations concerning the delivery.

#### **15. APPLICABLE LAW**

The material law of the Federal Republic of Germany shall be applicable. The United Nations Convention on Contracts for the International Sale of Goods of April 11th, 1980 and conflicting legal prescriptions shall not be applied.

#### **16. PLACE OF PERFORMANCE, LANGUAGE AND PLACE OF JURISDICTION**

16.1 Place of performance shall be such place in accordance with the Order, to which the product is to be delivered or at which the work or service is to be rendered. Place of performance for payments of NOVALED shall be the business seat of NOVALED.

16.2 The contract language shall be German. In as far as the parties should make use of another language besides that, then the German wording shall have priority.

16.3 Dresden shall be agreed as place of jurisdiction for business transactions.

#### **17. PARTIAL INEFFECTIVENESS AND WRITING-CLAUSE**

17.1 If one of the regulations of these GTC-Purchase, or other components of the Order should be or become ineffective and/or not practicable in the future, then this shall not affect the effectiveness of the other regulations.

17.2 All agreements between the Supplier and NOVALED, and all Orders shall only be binding and obligatory for NOVALED, if they have been recorded in writing. All amendments, supplements or supplementary agreements before, during, or after conclusion of contract shall also require the written confirmation of NOVALED. The requirements of the writing-clause can only be renounced in writing. Communications by telefax, e-mail or remote data transmission shall be regarded as equal and equivalent to correspondence in writing.

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