

# **Newsonic GmbH, General Terms and Conditions of Sale**

## **ARTICLE 1 - AREA OF APPLICABILITY**

The following General Terms and Conditions of Sale, as most recently amended, shall apply to all deliveries by Newsonic GmbH, Reutlingen, Germany (hereinafter "NEWSONIC") of goods and related services, and constitute an integral part of each sales contract that is entered into between a customer as buyer (hereafter customer) and NEWSONIC as seller (hereafter "NEWSONIC"). NEWSONIC has the right to amend and change these Terms and Conditions of Sale at its own discretion. The customer has the right, at any time, to request from NEWSONIC a copy of the currently applicable Terms and Conditions of Sale. Deviations from these General Terms and Conditions of Sale are valid exclusively if made in written form. Any contrary general terms and conditions of a customer shall not apply, irrespective of whether NEWSONIC expressly objects in a particular case or not. If individual provisions of these General Terms and Conditions of Sale should be invalid in whole or in part, the validity of the remaining provisions or the valid parts of such provisions shall not be affected. Particular conditions of contract validly agreed upon by the parties in written form for the purpose of a specific sales/purchase transaction shall prevail over these General Terms and Conditions of Sale if in contradiction with same.

## **ARTICLE 2 - CUSTOMER ORDERS**

Customer orders can be made in writing or orally. They must be accepted by NEWSONIC in writing. A sales contract is entered into only upon formal acceptance of the order by NEWSONIC. Any quotation made by NEWSONIC even if made following a request of a customer is always deemed to be only a request to the customer to make a quotation to NEWSONIC. In such a case again the sales contract is only entered into upon formal acceptance of such quotation by NEWSONIC.

## **ARTICLE 3 - COUNTRY-SPECIFIC REGULATIONS**

The customer must advise NEWSONIC no later than at the time of the order of any country-specific regulations and standards. This shall apply in particular to regulations and standards that require adjustments or changes to the goods to be delivered by NEWSONIC. Unless otherwise agreed, the goods delivered by NEWSONIC shall be deemed to conform to the contract if they satisfy German regulations.

## **ARTICLE 4 - SALES DOCUMENTATION AND QUOTATIONS BY NEWSONIC**

The sales documentation and technical descriptions provided by NEWSONIC are not binding, unless otherwise warranted by NEWSONIC in writing. Quotations made by NEWSONIC remain subject to change, i.e., they can be freely revoked or amended, at any time prior to being replied to by the customer. In the absence of specific provisions, any such quotations shall be in effect only 30 days from the date they are issued and shall expire at once if not replied to in time by the customer.

## **ARTICLE 5 - PRICES**

Prices in price lists, quotations, etc., shall be understood in each case to be EXW (ex works) Reutlingen, Germany, (Incoterms 2010) not including taxes / charges and without packing and transport costs. The applicable prices shall be those in effect on the date of the acceptance of the order. All freight, insurance, approval and certification costs shall be borne by the customer. Additionally, the customer shall pay all taxes, fees, customs duties and other charges that arise in connection with the performance of the contract. To the extent that such charges are levied from NEWSONIC, the customer shall reimburse them upon first demand.

For order volumes of less than 100.--, € NEWSONIC will impose a surcharge for small-volume purchases of 30.--. €

## **ARTICLE 6 - PAYMENT TERMS**

Unless otherwise agreed, all customer payments shall be made in Euros to the German headquarters of NEWSONIC. All NEWSONIC invoices for deliveries to customers or third parties specified by such customers shall be due and payable by the buyer without deduction within 30 calendar days after the invoice date. To the extent that the customer fails to fulfil its payment obligation by such time, NEWSONIC shall have the right, without any formalities, to demand default interest on the outstanding balances in the amount of the current Lombard loan interest rate, but no less than five percent per annum.

To the extent that the customer has defaulted on its payment obligations, NEWSONIC shall have the right to suspend delivery of any goods until the outstanding balances have been paid in full and

without deductions. NEWSONIC shall have the right to set off any claims that the customer asserts against NEWSONIC against any claims due by the customer to NEWSONIC. The customer shall have the right to set off its payment obligations against NEWSONIC only against such claims that have been recognized by NEWSONIC or that have been awarded in a final enforceable judgment. In the event of a payment default and justified doubts as to the solvency of the customer, NEWSONIC shall have the right immediately to accelerate maturity of all claims under the business relationship and to make delivery of any unpaid goods contingent on sufficient advance payments.

#### **ARTICLE 7 - DELIVERY TERMS**

Deliveries to the customer or third parties designated by him are exclusively EXW, i.e. ex works, storehouse or another named place (see Art. 5), not cleared for export and not loaded on any collecting vehicle.

#### **ARTICLE 8 - DELIVERY TIMES**

The contractually agreed delivery date shall be deemed to have been satisfied if the goods are made available for delivery by such time at the place of manufacture or at any other designated place. If the delivery date cannot be met due to one of the following reasons, the delivery period shall be extended by a reasonable time:

- If the customer fails to comply with its contractual obligation to cooperate,
- If the failure to meet the delivery time is due to a strike or lockout or other unforeseeable event that is not the fault of NEWSONIC,
- If the customer demands subsequent changes or additions.

Partial deliveries are permissible. Art. 6 paragraph 3 remains reserved. Delivery times indicated in quotations of NEWSONIC (see Art. 2 and 4) are not binding until the sales contract is validly entered into. As to availability of the respective goods any such quotations are without engagement.

#### **ARTICLE 9 - TRANSFER OF OWNERSHIP, USE AND RISK**

Title to the goods passes to the customer upon full and contractual payment only. The customer concurs that as long as all outstanding claims have not been paid, NEWSONIC shall have the right to assert a right of retention in the appropriate registries, accounts or the like at the expense of the customer in accordance with applicable law. The customer hereby commits to refraining from taking any action that would be contrary to the objectives pursued by the right of retention. The customer shall bear all risks of loss of and damage to the goods from the time the goods are made available for delivery (cf. also Art. 5, above, and Art. 10, below).

#### **ARTICLE 10 - DELAYED PICKUP BY THE CUSTOMER**

If the customer fails to take delivery of the goods in accordance with the terms of the contract, the goods shall be warehoused uninsured at the expense and risk of the customer. NEWSONIC shall have the right and authority to have goods that are not picked up be stored on third-party premises in the name and at the expense of the customer.

#### **ARTICLE 11 - TRANSPORT**

If NEWSONIC arranges for transport, it shall do so exclusively on behalf, in the name and for the account of the customer. In such case, the carrier will either be ordered by NEWSONIC to collect freight costs and all related charges (such as import VAT) from the customer or, if applicable, to invoice the freight costs solely to NEWSONIC which, in such case, will invoice the freight costs and disbursements to the customer. Any such initiation of transport by NEWSONIC shall not lead to a change of the delivery terms pursuant to Article 7.

The procurement of transport insurance shall be the exclusive responsibility of the customer.

#### **ARTICLE 12 - INSPECTION**

The customer shall inspect the goods immediately, either upon delivery or, if this should not be possible, immediately after the receipt of the goods at the customer's plant or at the designated address, and shall do everything to minimize losses. Complaints must be notified in writing and in detail immediately, but no later than within 10 calendar days, upon initial inspection. The deadline shall run accordingly from the time of the inspection upon delivery or upon receipt by the customer or at the designated address. The customer is responsible that losses sustained during transport are confirmed to the customer by the carrier.

### **ARTICLE 13 - LIMITED WARRANTY**

NEWSONIC warrants that the goods are free of material or manufacturing defects. The warranty periods are as follows:

- Electronic indicating units: 24 months,
- Mechanical and electromechanical parts and accessories: 6 months,
- Parts subject to ordinary wear and tear: 30 days,
- Repairs: 3 months on the repaired parts,
- Parts and sub-assemblies acquired by the customer for its own repair purposes and not in respect of any warranty cases: 6 months.

For calibration/adjustment no warranty is granted. NEWSONIC warrants during the above mentioned warranty periods that the goods manufactured by NEWSONIC if correctly used are able to be adjusted to meet all possibly printed specifications of NEWSONIC in respect of accuracy and performance for the respective model or typ. For 3<sup>rd</sup> party products no warranty is granted. For such products shall apply exclusively the respective warranty of the manufacturer. The warranty period runs from the date of purchase if the goods were purchased from NEWSONIC directly; if purchased from an official partner of NEWSONIC it runs from the date of purchase from such partner. Warranty claims, together with the complained goods shall be addressed to NEWSONIC directly. The warranty excludes losses due to transport, ordinary wear and tear, defective maintenance, failure to observe operating or assembly instructions, over-use, unsuitable fuels, chemical or electrolytic effects, defective construction and assembly work not carried out by NEWSONIC, and any other grounds that are not NEWSONIC 's responsibility. During the warranty period NEWSONIC will provide spare parts and man power in order to remedy the defect. If the customer requires the repair works to be performed in its own factory, NEWSONIC will provide the spare parts for such repair of the defect. In that case all displacement and travel costs at the applicable rates for after-sale service shall be at customer's sole charge. Excluded from the warranty for new products are all parts subject to ordinary wear and tear, like for instance but not limited to impact bodies, indenters, impact plungers, test blocks, connecting cables etc. These products are subject to ordinary wear and tear during use. NEWSONIC shall only be obliged to correct defects if the customer has complied with all duties imposed on the customer by contract and by law. In particular, the customer shall not have the right to withhold the agreed payments on the grounds of a pending warranty claim.

### **ARTICLE 14 - EXTENDED WARRANTY**

The customer has the option to extend the warranty period for the electronic indicating unit of the product by up to 36 months. The warranty term for the electronic indicating units of the purchased product may be extended by NEWSONIC for a subsequent additional period of 12, 24 or 36 months upon buyer's request to NEWSONIC. Following payment of the warranty extension at the time of product purchase or within 90 days thereafter, the extension becomes effective upon written confirmation by NEWSONIC. Extended warranties run between NEWSONIC and the customer without any third party involvement, and are not transferable. Warranty work cannot be performed by parties other than NEWSONIC. The extended warranty is valid only if the buyer retains the Extended Warranty Certificate and documentary proof of purchase from NEWSONIC.

### **ARTICLE 15 - LIABILITY, PRODUCT SAFETY**

NEWSONIC shall be liable exclusively for delivery of the goods in a condition consistent with the contract and for the performance of its warranty obligation. Liability in any event is limited to the net invoice value of the complained goods. NEWSONIC shall not be liable for indirect or consequential losses of any kind, such as standstills of machinery or construction sites, liquidated damages or penalties to the detriment of the buyer, currency losses, lost profits, etc. The products may not be used for purposes other than those recommended by NEWSONIC and not in combination with products that are not suitable for the purpose. NEWSONIC disclaims any liability for damage or loss due to noncompliance with this provision.

### **ARTICLE 16 - REPAIRS**

Repair cost estimates will be produced at a cost of 100 € per item. If the repair proceeds through completion, this charge will be deleted.

### **ARTICLE 17 - RETURN OF GOODS**

Goods delivered by NEWSONIC that conform to the contract will be accepted for return only by prior agreement. NEWSONIC will accept only complete packaging units that are in their original packaging and that correspond to the current product line. The material will be inspected by NEW-

SONIC quality control and must be in a flawless, like-new and saleable condition. Failing such condition a return is excluded.

Special order or customized products will not be accepted for return in any event. For order volumes of less than 100 € no returns will be accepted. If the returned goods meet the above-described criteria, the customer will receive a credit, reduced by the following amount (in respect of the invoiced net amount):

- Return within 10 days of delivery: No deduction at good will
- Return within 30 days of delivery: 10% of value of goods returned, minimum € 100.- processing fee per order

In case of return after 30 days of delivery: No return shall be possible.

#### **ARTICLE 18 - DATA PROCESSING**

NEWSONIC shall have the right to process and store such data within the meaning of the Data Protection Act that it has received in the context of the business relationship with the customer, irrespective of the origin of such data.

#### **ARTICLE 19 - PLACE OF PERFORMANCE, APPLICABLE LAW AND VENUE**

Unless specified otherwise, the place of performance of services under this agreement shall be the German domicile of NEWSONIC. The sales contract is subject exclusively to German substantive law to the exclusion of the provisions of international conflicts of laws and the United Nations Convention on the International Sale of Goods of 1980 (Vienna Sale of Goods Convention). The exclusive venue for both parties is at the registered German domicile of NEWSONIC.