

## 1. INTRODUCTION

(1) These Terms and Conditions shall govern any and all supplies and services, including information and consultations, provided by Neorem Magnets Oy (Neorem). They shall also govern any and all future supplies or services provided to the Customer even where no express reference is made thereto after concluding the final contract between Neorem and the Customer. Neorem and the Customer are hereinafter referred to as the Parties.

(2) The Parties shall not apply any conflicting standard terms and conditions of the Customer or a third party except to the extent that the Parties have expressly consented thereto in writing. Provision of supplies or services by Neorem does not constitute such consent.

(3) Any and all offers by Neorem shall be subject to change unless they include a binding period. The contract shall be formed only if Neorem confirms the Customer's order in writing or renders the supplies or services upon order without any separate confirmation.

## 2. MATERIAL SELECTION

In the event Neorem gives any advice on material selection or other similar assistance, it is given free of charge without any undertaking, representation or warranty and Neorem shall have no liability – neither compensatory nor consequential – for any such advice or assistance.

## 3. SPECIFICATIONS

(1) The goods shall meet the agreed specifications. If no specifications are agreed, the goods shall meet Neorem's general magnetic grade specifications at the time of delivery.

(2) Neorem reserves the right to make necessary or expedient changes, in particular, in design, material selection, specification or construction type, provided the Customer is notified of such changes in advance and its interests are appropriately taken into account.

(3) Neorem shall provide no warranty and assume no liability with regards to the functionality of the goods and defects in the event of manufacture in accordance with drawings, samples or other instructions of the Customer, provided that such goods or defects are based on such instructions.

(4) The Customer shall indemnify Neorem against any and all third party claims based on damage caused by the goods, as far as the damage results from drawings, samples or other instructions by the Customer. The Customer warrants that the manufacture and delivery of the goods manufactured according to its instructions will not infringe any third party industrial property rights. Should such industrial property rights be asserted by third parties against Neorem, Neorem may rescind the contract, unless such third party withdraws assertion of the industrial property rights within a reasonable period by way of written declaration to Neorem. The Customer shall indemnify Neorem against any and all third party claims based on such industrial property rights.

(5) The Customer warrants that parts, materials and other substances provided by the Customer shall be suitable and free and clear from defects. Neorem shall be under no obligation to inspect goods upon receipt or inspect them for their suitability.

## 4. DELIVERY TIME AND PASSING OF RISK

(1) Agreed deadlines for Neorem's supplies and services shall commence only once agreement has been reached on all details for provision thereof and the Customer has taken all necessary co-operative steps, in particular, has provided all information, documents or materials to be procured by it and has rendered advance payments or down payments owed by it. Late co-operative actions or changes desired by the Customer shall result in an appropriate extension of the deadlines.

(2) The delivery time is specified in the contract or in Neorem's order acknowledgement and refers to the date on which the goods shall be shipped from Neorem at the latest. Neorem is entitled to divide the goods in partial shipments and deliver the total order quantity  $\pm 10\%$ , provided the Customer is notified of such variances and these are reasonable taking its interests into account. The Customer shall owe payment for the actual amount delivered.

(3) The delivery term is EXW Ulvila (Incoterms 2000), if not otherwise defined in the contract or in the order acknowledgement.

(4) Should the delivery be delayed by more than eight weeks, the Customer shall as its sole remedy be entitled to terminate and cancel the purchase of the goods delayed by giving written notice thereof to Neorem. Such termination cannot, however, be made in respect of products the manufacturing of which has advanced so far that Neorem cannot use them for any other order.

(5) Should the delivery be delayed due to reasons for which the Customer is responsible, Neorem accepts no liability for the delay.

(6) Risk of loss to the goods shall pass to the Customer upon delivery at the place of delivery. This shall also apply even if partial deliveries are rendered or if Neorem provides additional services (e.g. handling of shipping or bearing of shipping costs).

## 5. PRICES AND PAYMENTS

(1) In the event of cost increases in raw materials, energy or transportation services or due to currency fluctuations or any other comparable reason, Neorem may adjust the agreed prices accordingly.

(2) Payments shall be rendered without any reduction free of charge to the designated payment agency within 14 days following the date of invoice. Bills of exchange and cheques shall be accepted only based on separate agreement and only on account of performance. Timely payment shall be determined by receipt of the payment.

(3) The Customer shall have a right of set-off or retention only if its counterclaims have been confirmed in a final and binding judgment, are undisputed or have been recognised by Neorem.

(4) If the Customer has not paid on time, Neorem may postpone the fulfillment of his own obligations towards the Customer until such payment is made, and recover delay interest on the amount outstanding at the rate defined in Neorem's invoice.

(5) If the Customer becomes insolvent, goes into receivership, is adjudged bankrupt or becomes subject of dissolution, liquidation or bankruptcy proceedings or applies for judicial or extra-judicial settlement with its creditors or makes an assignment for the benefit of its creditors or is threatened by measures similar to those listed above, or its financial status has substantially deteriorated, Neorem may, at its sole discretion without prejudice to any of its other rights, stop any products in transit and/or suspend further deliveries and/or, by written notice to the Customer, terminate the contract.

## 6. WARRANTY AND CLAIMS

(1) Neorem warrants that as at the time of passing of risk the goods delivered shall be free and clear of defects. The goods shall only be regarded as defective if the goods do not meet the specifications set out in clause 3 above. There shall only be defect-related claims in the event of significant variances from such specifications. Neorem is not liable for any function, quality or properties of the goods other than as expressly stated above, and any terms implied whether by statute or otherwise relating to quality or fitness for purpose are hereby excluded. Neorem provides no warranty for wear and tear due to normal usage and defects resulting from improper use, improper treatment or storage and non-compliance with manufacturer's assembly or operating instructions.

(2) Any and all information provided by Neorem, in particular pictures, drawings, technical information and references to norms and specifications in offers and brochures and on internet pages, are only descriptions and indicators and do not constitute a warranty of quality or durability. Any and all information provided by Neorem shall not be binding upon Neorem, save to the extent that they are included in the contract or order acknowledgement and made binding by explicit reference.

(3) The Customer is deemed to have accepted the quantity, quality, condition, packing and marking of the products delivered, unless it has given a notice to Neorem in writing within one week from the date the products were delivered to the Customer or its representative. The same shall apply to the delivery of samples.

(4) If the Customer receives any goods, which manifest a defect having its cause existing already at the time of passing of risk, the Customer shall give notice to Neorem in writing within one week after the goods have arrived to their named place of destination. In the event of any defects in the goods, and provided that the Customer has notified Neorem in due time, Neorem shall at its own expense and taking into consideration the reasonable time to produce new goods (if needed), at its sole discretion either rectify the defect or deliver new and faultless goods. The products confirmed to be defective by Neorem shall be returned to Neorem upon Neorem's request at Neorem's expense. Instead of correcting a defect, Neorem shall always have the right to credit the Customer for the decrease in the value of goods commensurate to the defect.

(5) Without limiting the applicability of the above, the warranty claims shall be made within 12 months from the date on which the Customer has received the delivery (unless otherwise agreed in the contract), after which date Neorem has no liability as regards the delivery or the products delivered. This shall not apply in the event of willful conduct, malicious concealment of a defect or non-compliance with a warranty of quality.

(6) Neorem's liability for defects in products is limited to the rights and remedies described above. This is the sole warranty given by Neorem. No other warranties, express or implied, including but not limited to fitness for a particular purpose and merchantability, are made or will be deemed to have been made by Neorem. The Customer shall bear the sole responsibility for determining the suitability of the products for the use contemplated by the Customer.

#### **7. FORCE MAJEURE**

(1) Neither Party shall be liable for delay in performing or failure to perform its obligations under the contract or otherwise if the delay or failure results from an impediment outside its reasonable control such as, but not limited to, war, terrorism, fire, explosion, flooding or other extreme weather, major machine break down, strikes, lockouts and other labor disputes, trade disputes, refusals to grant licenses or delays in deliveries by subcontractors. Delay or failure due to such impediment shall not constitute a breach of contract, with the effect that the affected Party is relieved from liability and all contractual claims against it in respect thereof.

(2) The Party being affected by a force majeure shall inform the other Party at its commencement with an indication of its probable duration, and also notify the other Party upon termination of the force majeure. The time of performance shall be extended by a period equivalent to that during which performance is so prevented. If such a delay or failure persists for more than three months, either Party shall be entitled to terminate the contract in respect of goods not yet delivered to the Customer. In the event of such termination, neither Party will be entitled to any compensation, provided, however, that any prepayment for goods not delivered shall be refunded and goods in transit not delivered shall be reverted.

#### **8. TITLE**

(1) Title to the goods shall transfer to the Customer upon full payment of the purchase price and other possible Customer receivables due and payable at the time of delivery to Neorem, irrespective whether such Customer receivables result from the contract or not.

(2) Until the title passes to the Customer Neorem has the right to recover any goods in the Customer's possession or control to which Neorem holds the title. The Customer hereby provides Neorem with the right to enter any land or building where the goods are stored in order to collect such goods.

(3) If the Customer processes the unpaid goods into or to form a part of a new object, Neorem is granted title to the new object proportionate to the value of the unpaid goods in the new object until Neorem has received full payment for the original goods.

(4) If the Customer sells any unpaid goods or new object, the Customer hereby assigns to Neorem a proportion of its claim on any third party equivalent to the debt for the unpaid goods / new object sold.

(5) The Customer shall exercise the care of a prudent businessman when possessing the goods in which Neorem holds sole or joint title.

(6) Any moulds, tools and construction documents necessary for performance of the contract and created by Neorem or on behalf of Neorem shall become the sole property of Neorem. The Customer shall have no rights thereto, even if it has participated in the costs for the creation of the moulds, tools or construction documents.

(7) Nothing in this Section 8 shall limit Neorem's right to receive full and punctual payment of the purchase price and other possible Customer receivables from the Customer.

#### **9. KNOW-HOW AND CONFIDENTIALITY**

Neorem shall retain title, copyright and other industrial property rights in any and all documents transmitted or furnished to the Customer. These may not be disclosed to third parties and may be used only in the context of the contract with Neorem, and, upon request, shall be returned to Neorem without undue delay together with any and all copies made.

#### **10. ENTIRE AGREEMENT AND SEVERABILITY**

(1) These Terms and Conditions, the order acknowledgement with its enclosures and any amendments agreed in writing constitute the contract between the Parties. The contract will supersede all previous and contemporaneous negotiations, commitments and understandings between the parties, whether written or oral, with respect to the goods covered by the contract.

(2) If any part of the contract or these Terms and Conditions is determined to be invalid or unenforceable, such determination shall not invalidate any other provision of the same.

#### **11. GOVERNING LAW**

The contract and these Terms and Conditions shall be governed by the laws of Finland without regard to its principles and rules on conflict of laws, the Sale of Goods Act (355/1987, as amended) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) (and except as otherwise provided in clause 12, second paragraph, below).

#### **12. DISPUTES**

(1) Any dispute, controversy, or claim arising out of or relating to the contract or these Terms and Conditions, or the breach, termination, or validity thereof that cannot be settled amicably, shall be exclusively and finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Central Chamber of Commerce of Finland. The arbitration shall be held in Helsinki and the arbitral proceedings shall be conducted in the English language.

(2) Notwithstanding the arbitration clause set out above, Neorem shall in its sole discretion be entitled to choose to have recourse to competent courts and execution authorities in and under the laws of the Customer's country, or elsewhere, for purposes of collecting debts of the Customer.

#### **13. GENERAL LIMITATION OF LIABILITY**

(1) Except as expressly provided for in these Terms and Conditions or as otherwise agreed, Neorem shall in no circumstances, including product liability, be held liable for any incidental, indirect or consequential loss or damage including, but not limited to, loss of profit, loss of production, discarded production or claims from the third parties.

(2) The cumulative maximum liability of Neorem during any year of the contract (each a "Contract Year") with respect to claims and costs arising out of or incurred in connection with the contract or the supply of goods and services, whether based on contract, warranty, tort (including negligence of any nature, whether sole or concurrent), strict liability or otherwise, shall not exceed in the aggregate an amount equal to the total sales price of supplies or services purchased by the Customer under the contract during the Contract Year.

(3) These limitations, however, do not apply in the event of gross negligence.