GENERAL DELIVERY CONDITIONS
of NAF Neunkirchner Achsenfabrik AG for Use in Business Transactions with Commercial Enterprises with their Respective Seat Outside of Germany
Stand 15.12.2015

1 General Provisions; Scope
1.1 These General Delivery Conditions (hereinafter also referred to as “GDC”) shall apply to legal relationships between NAF Neunkirchner Achsenfabrik AG (hereinafter also referred to as „NAF“) and its customers in relation to goods and services (hereinafter also referred to as „deliveries“) to be provided by NAF. These GDC hereby expressly include all services of NAF (e.g. substitute deliveries, installation work).  
1.2 The GDC shall apply only for contracts of NAF with commercial enterprises.

1.3 These General Delivery Conditions shall apply exclusively in relation to deliveries within the scope hereof. Any contradictory conditions or conditions of the customer deviating from these General Delivery Conditions will not be binding for NAF unless NAF has expressly agreed to the application of such in writing. These General Delivery Conditions shall apply also if NAF undertakes a delivery to the customer without any reservations notwithstanding NAF being aware of conflicting conditions or conditions of the customer deviating from these General Delivery Conditions.

1.4 These General Delivery Conditions shall apply also to future deliveries of NAF to the customer.

2 Procedures up to the Time of Contract Formation; Forecast of Requirements
2.1 The procedures leading up to the formation of a legally binding contract between NAF and the customer shall be as follows: The customer shall, normally by way of a forecast of requirements, make a non-binding inquiry to NAF. NAF shall discuss with the customer by way of a consultation procedure the basic technical and commercial feasibility of such a non-binding offer. All data developed thereby such as, for example, drawings, illustrations, offers, measurements and weights shall remain non-binding at this stage. Only at the end of the consultation process shall the parties develop in a binding phase (hereinafter referred to as “series approval”) the respective deliverable by way of binding drawings including all relevant data (hereinafter referred to as “installation drawings”). Only thereafter shall the customer initiate an order to NAF based on the last applicable version of the installation drawings and the order shall constitute a legally-binding offer. A contract shall be first formed with the legally-binding acceptance of such an offer being made by NAF.

2.2 The parties may reach an agreement as to future delivery quantities also by way of a forecast of requirements. In such case the quantities set down for a period of up to four months shall be binding. In this regard the customer shall be obliged to take and pay for the delivery. The quantities set down for the following five and six months shall only be binding if the necessary raw materials and materials in advance from its suppliers with a reasonable lead time. In case of non-acceptance the customer shall reimburse the respective expenses. Insofar as any forecast of requirements gives details in relation to a sixth month and beyond, such shall be merely requirement planning for both parties.

3 Special Conditions for Prototype Orders (Procedures in Case of Series-Production Readiness, Pilot Production); Cooperation of Parties to Provide Support; Expenses; Target Specifications
3.1 The following special conditions shall apply on a supplementary basis for any orders for prototypes (pilot production) or related to the aim of obtaining series approval (procedures in case of series-production readiness). If such a special situation exists it should be clearly identified in the order process.

3.2 The parties shall cooperate in a particularly tight and trusting manner in the introduction of series production. This shall apply in particular to the exchanging of information concerning relevant knowledge and circumstances, the sending of inspection and test results for NAF.

3.3 The customer shall notify NAF on an unsolicited basis in each case of any apparent defects and, in addition to its own testing the customer shall also carry out tests on the basis of the requirements of NAF and it shall communicate the results of which with all related documentation (e.g. installation information) as well as complete information of all relevant facts concerning the target of series production. This shall also apply to any parameter changes such as, for example, design changes, the use of alternative materials or tools or changes in legal requirements.

3.4 In addition, NAF is entitled to take a reasonable number of random samples and undertake random examinations either on site or at the works of NAF. In the latter case the customer shall be obliged to remove any part required by NAF and to send such to NAF for examination. In the case of the works NAF shall take place at least after 1000 hours of operation.

3.5 Any rights to claim based on necessary interferences to operations or loss of use in the case of prototypes or series-production readiness are hereby excluded. In addition, each party shall bear its own costs (including personnel costs and any fees for third parties) and expenses (including installation and disassembly costs, packing and transport costs, as well as travel costs) insofar as the parties have not agreed otherwise in any particular case.

3.6 The target specifications for the product shall be determined for the future, at variance to the normal procedures (compare to section 2) where the installation drawing determines the target specifications, by way of the series approval given by NAF. This shall apply also in relation to the warranty rights of the customer. The requirements of a prototype shall be for its use for testing and development purposes only. In particular there shall be no rights to claim at any time in relation to a prototype for pilot production being refitted with target specifications for series approval

3.7 Such documentation shall, in case of a contract not being formed between the parties, be returned upon request.

4 Rights to Documentation and Developments; Title to Tools
4.1 NAF reserves to the full extent permissible all property and intellectual property exploitation rights to all documentation, technical, commercial and other business data or information in a tangible or intangible form as well as to all developed tools and components in such as technical drawings, data etc. for any price estimates, drawings, as well as designs and development and in particular those arising out of or in connection with the procedures covered in sections 2 and 3.

4.2 The customer is not entitled in this regard to register any patents or other property rights. Unless such are expressly granted the customer shall not receive any rights in terms of title, licences, reproduction, use or any other rights.

4.3 Documentation may be used by third parties only for the purposes of carrying out the contract and subject to the precondition that confidentiality agreements as set out under section 14 have been entered into and such documentation shall, in case of a contract not being formed between the parties, be returned upon request.

4.4 If NAF produces or develops tools in connection with any order, such shall remain the sole property of NAF alone.

5 Prices; Payment Conditions; Set-off; Right of Retention
5.1 All prices are “ex works”, plus the costs of packing, transport or shipping as well as any customs and other duties. In addition, the respective applicable transaction taxes (Verkehrssteuer) at the respective applicable amount shall apply.

5.2 Payments shall be made immediately upon receipt of invoice without any deductions for prompt payment. Payment shall be made to the bank account detailed by NAF. Any other method of payment shall not be accepted. Interest for delayed payment shall be at the rate of eight percentage points above the relevant central bank interest basis into effect.

5.3 The customer shall be entitled to set-off against any claim of NAF only if such claims of the customer have been confirmed by court judgment, are undisputed or have been acknowledged by NAF.

5.4 The customer is entitled to exercise his own right of retention only insofar as its counterclaims are based on the same contractual relationship.

6 Retention of Title
6.1 Notwithstanding any delivery or transfer of risk, NAF shall retain title to the goods supplied in the delivery (hereinafter referred to as „reserved goods”) until receipt of all payments arising from the commercial relationship with the customer. In the event of any contractual breach by the customer, in particular in case of any default in payment exceeding 14 days, NAF may take back any reserved goods. NAF is entitled to take back any reserved goods for the purposes of selling such and the moneys received from such sale shall be calculated against any outstanding debts of the customer – minus any reasonable costs incurred. Similarly, the right of setting-off the goods value in relation to any outstanding payment debt of the customer may also be undertaken. In addition, the customer shall receive a statement concerning the facts. This shall not affect any rights of NAF at law to terminate the contract.

6.2 The customer shall handle any reserved goods with care; in particular the customer shall at its own expense ensure such reserved goods against the risks of fire, water and theft to sufficient extent so as to render original value. Insofar as any maintenance or inspection work is necessary, the customer shall promptly notify NAF of such costs to NAF and provide technical instructions. NAF is entitled to take back any reserved goods. NAF is entitled to take back any reserved goods to the extent in which the customer fulfils its payment obligations arising from the moneys received for the reserved goods, does not become in default with its pay- ment and provided that no application has been made for the commence- ment of insolvency proceedings and payments have not ceased if any one of the above occurs. NAF may require that the customer notifies NAF of all claims against its debtors and provide NAF with necessary details for the collection of such and further that the customer provides all related docu- mentation and notifies the debtors (third parties) of the situation.

6.3 In case of any other claims by third parties the customer shall notify NAF without undue delay in writing so that NAF can initiate legal proceedings or undertake any other legal measures to protect its legal rights. Insofar as any third party is not able to reimburse to NAF any court or out-of-court costs for legal proceedings, the customer shall be liable to NAF for the loss resulting. The same shall apply if the customer does not notify NAF within a reasonable time of the actions of the third party.

6.4 The customer is entitled to sell reserved goods in the ordinary course of business. Any moneys or claims in relation to third parties derived from such resale by the customer shall belong to NAF to the full amount of the invoice price (including any legal transaction taxes regardless of whether or not the reserved goods are resold with or without further processing. The customer is entitled to enforce such claims in the customer’s own name and at his own expense in good faith. In the event of any breach in respect of any terms of these General Delivery Conditions, NAF is entitled to take back any reserved goods or to initiate legal proceedings in relation thereto. In case of any such proceedings NAF may initiate such proceedings in relation thereto. In case of any such proceedings NAF may initiate such proceedings in relation thereto.

6.5 If the reserved goods are processed with other goods belonging to NAF, NAF shall acquire part-ownership of the new object in proportion to the value of the reserved goods (final invoiced amount, including transac- tion taxes) compared to the other processed goods at the time of process- ing. In relation to the objects resulting from such processing the same shall apply as for reserved goods.
6.6 If the reserved goods are mixed with other goods not belonging to NAF, NAF shall be entitled to charge the customer a price which is in accordance with the value of the reserved goods (final invoiced amount, including transaction taxes) and which is necessary to hold back any transport. In such case the customer is not entitled to make any claims against NAF unless the holding back of the transport was without justification and NAF should have been aware of such.

8.3 NAF is entitled to make part-deliveries insofar as such is reasonable for the customer.

8.5 Transport packing and other packing in accordance with the requirements of the Packaging Richtlinien (Verpackungsrichtlinie) will not be taken back by NAF.

9.1 Any rights of the customer to claim on the basis of defects in the goods is subject to the condition that the customer inspects the goods having regard to the normal commercial practices and the requirements of mandatory law in accordance with the instructions given by NAF after delivery and make transfer of risk having regard to the circumstances. The customer is not entitled to make a claim for a defect if such is not notified to NAF within a reasonable time after the defect has been detected or should have been detected. After the expiry of this period of time a claim for a defect is not possible. The customer shall be entitled to lodge a claim for the defect only if NAF has acted so as to grossly breach the duty of due care (against the principle of good faith) or against the principles of good faith ('Treu und Glauben').

9.2 Before exercising any rights to claim for defects the customer shall initially check carefully whether the claim for defects is admissible and that such is the result of a defect. The customer shall be entitled to make such claim to NAF insofar as such is the result of a defect.

9.3 The right to claim for defects shall not exist in relation to any matters which are caused by measures or designs which the customer has expressly required or

b) are caused by incorrect installation or connections or incorrect storage or,

c) relate to materials or products which the customer has made available in relation to which the use has been expressly required by the customer notwithstanding information to the contrary from NAF.

A defect shall not exist if,

a) there is only a minor deviation from the agreed quality or,

b) there is only a minor limitation of usability or,

c) such is the result of normal wear and tear.

There shall be no right to claim for damages resulting from defective or careless use, excess stress, overloading, unsuitable equipment, defective construction work, unsuitable subsoil or on the basis of any other influences which NAF has not taken into account.

In the event that the customer or any third party undertakes improper changes or maintenance work there shall also be no right to claim for defects for such matters on the result of the customer's own performance.

9.4 Insofar as a defect exists, NAF may at its choice and within a reasonable period provide supplementary performance (Nacherfüllung) in the form of a rectification of a defect which may supply a substitute performance and may also bear the costs, and in particular those related to transport, road, work and material necessary for the purposes of the supplementary performance insofar as such are not increased by the delivered objects being subsequently transported to another place than the premises of the customer; this is not the case if such transport corresponds with intended use. In terms of any Supplementary performance, NAF is not obliged to bear the costs of installation or removal of any defective delivery.

9.5 The customer shall, insofar as it is reasonable for it to do so, provide technical support for any supplementary performance. In particular, the customer shall advise of any technical peculiarities or special risks (e.g. during removal or installation) which may result from the processing (Rücktritt), the exercise of such right of withdrawal shall require the customer to compensate as a result of the delay or in lieu of performance beyond those limits set out in section 7.5 above are hereby excluded.

This shall not apply insofar as NAF would be liable under the provisions of mandatory law.

7.6 Otherwise, in the event of delayed delivery any other rights of the customer to compensation as a result of the delay or in lieu of performance beyond those limits set out in section 7.5 above are hereby excluded.

This shall not apply insofar as NAF would be liable under the provisions of mandatory law.

7.7 Insofar as, in accordance with the provisions of law related to delays in delivery by NAF, the customer has a right to withdraw from the contract (Rücktritt), the exercise of such right of withdrawal shall require the customer to notify NAF within a reasonable period of time that the delivery does not exist.

8 Transfer of Risk; Part Deliveries; Packing

8.1 The risk of any accidental damage or accidental loss of a delivery shall be borne by the customer. Any duties of care (e.g. during removal or installation) which may result from the processing (Rücktritt), the exercise of such right of withdrawal shall require the customer to compensate as a result of the delay or in lieu of performance beyond those limits set out in section 7.5 above are hereby excluded.

This shall not apply insofar as NAF would be liable under the provisions of mandatory law.

8.2 If so requested by the customer, NAF shall insofar as such is reasonable for the customer, arrange at the expense of the customer to transport the delivery at the works of NAF and successful notification of its readiness to shipping. The customer shall also pay any duties of support (scheduling coordination in transport or support in unloading).

8.3 NAF is entitled to charge the customer for any supplementary performance insofar as the customer has not been aware of such. The customer shall be entitled to make any claim against NAF for any necessary work and material costs at conditions to be agreed and shall make available any necessary spare parts at no charge. Transport costs and road costs shall in such case not be borne by NAF. The costs of installation or removal of any defective delivery shall also not be borne in such case by NAF. The customer shall document any defect and its rectification in a comparable manner and provide NAF without any limitation and at any time information as to the determined cause of the defect and shall further provide information as to all of the circumstances connected with the defect and its rectification.

This includes a right to test any parts removed at the works of NAF as well as on-site inspections. In addition, NAF is entitled to send its own employees to the defect rectification procedures or specific stages thereof.

9.7 In the event that any supplementary performance to which the customer is entitled is not successful and NAF is not at fault in this regard, the customer shall be entitled to withdraw from the contract (Rücktritt) and to withdraw from the contract subject to the following limitations. The customer may withdraw from the contract on the basis of a defect only if the contract breach is the result of a defect which is of material significance for the customer and NAF was aware of or should have been aware of such. However the customer shall not be entitled to withdraw from the contract if NAF does not notify of the withdrawal from the contract within a reasonable time after the customer became aware of the defect or should have become aware of the defect. The customer shall be entitled to make a claim for the defect the time for the rectification of the defect or the undertaking of supplementary performance in accordance with paragraph 9 of this section. This loss of a right to withdraw shall not apply if the customer grossly breached the contract or contrary to the principles of good faith.

9.8 Any rights of the customer to claims for damages shall be excluded insofar as and to the extent that NAF is not liable on the basis of mandatory law to also pay damages.

9.9 Insofar as the customer, as a result of a defect in an object supplied by NAF, is made subject to any third party claims against NAF or to claims for recourse from NAF shall not exist insofar as the customer has agreed with its buyer to conditions that do not exceed the legal rights of
15.2 The customer may copy, process, translate or transform the software from the object code to the source code only to the extent permitted by law. The customer undertakes not to remove any producer details – in particular copyright identification marks – or to change such without the prior written approval of NAF. All other rights to the software and the documentation including copies thereof shall remain with NAF or, as applicable, its software suppliers. Any right to grant sublicences is hereby excluded.

15.3 NAF shall examine the software before it is made available to the customer by way of current measures corresponding with the state of the art for computer viruses, Trojan horses, hoax viruses and comparable program- ming, program parts or malicious software which could result in a loss or falsification of data or programs or limitations to the system or parts thereof (hereinafter called „computer viruses“). Notwithstanding the abo- ve, neither the risk that the software contains unrecognised or mutated computer viruses nor the possibility that such could at a later time access a (operational or control) system of the customer and therefore possibly change or erase program data or software or other data or programs or limit systems can be excluded.

16 Jurisdiction; Applicable Material Law; Dispute Resolution Clause; Place of Performance; Ruminations; Savings Clause; Non-Assignment of Contractual Rights by Customer

16.1 The exclusive place of jurisdiction for both parties shall be Nuremberg (Nuernberg).

16.2 The material law of Sweden shall apply to the exclusion of the referral regulations of Swedish International Private Law and UN-Sales Law as well as the law concerning international Sales.

16.3 Disputes arising out of the legal relationship between the customer and NAF which cannot be settled by way of negotiations shall be dealt with according to arbitration proceedings under the respective latest procedural rules of the International Chamber of Commerce (ICC) and such shall form an integral part of the contractual relationship between the customer and NAF. The place of the arbitration tribunal shall be Nuremberg (Nuernberg).

16.4 Insofar as such is not agreed otherwise in individual cases, the place of performance shall be Neunkirchen am Brand.

16.5 Declarations which could lead to the establishing, maintenance or exercis- ing of any rights must be in writing. This requirement of writing shall also be satisfied by way of text (Textform) communication of data (e.g. email) or telephone unless the law requires that such must be in writing.

16.6 Insofar as any provisions of these GDC are or become, in whole or in part, invalid or impracticable, this shall not affect the effectiveness and applica- tion of the remaining provisions. The parties shall attempt to replace any provision which is, in whole or in part, ineffective or impracticable by way of a new provision which most closely reflects the original interests. The same shall apply insofar as there is any unintended omission or failure to regulate any matter.

16.7 The customer shall not be entitled to assign any of its contractual rights to a third party without the written approval of NAF.

11 Impossibility; Adjustment of Contract

11.1 Insofar as any delivery is impossible, the customer is entitled to claim da- mages unless NAF is not responsible for the impossibility. However, any right to claim damages on the part of the customer shall be limited to 10 % of the value of the respective part of delivery which cannot be correctly provided as a result of the impossibility. This limitation shall not apply inso- far as mandatory provisions of law are responsible and in particular in case of material breach of contract by NAF. No change of the burden of proof to the disadvantage of the customer shall result from the above. The right of the customer to withdraw from the contract shall not be affected hereby.

11.2 Insofar as any events in terms of section 7.4 substantially change the com- mercial significance or contents of the delivery or have a major impact on the operations of NAF, the contract shall be adjusted accordingly in accordance with the principles of reasonableness and fairness. If this is not commercially reasonable, NAF may withdraw from the contract. The same shall apply if any necessary export permits are not issued or cannot be used if NAF wishes to exercise its right of withdrawal. NAF shall notify the customer as soon as possible after becoming aware of the impact of the circumstances and even if an initial agreement has been reached with the customer as to an extension to delivery times.

12 Other Liability

12.1 Any further rights of the customer to claim damages, regardless of the legal basis therefor, other than those expressly set out in these General Delivery Conditions are hereby excluded. This shall include all claims result- ing from an improper design of operations, loss of profit, loss of information or data or consequential damages resulting from any defect.

12.2 The above named limitations of liability shall not apply insofar as NAF is liable to pay damages on the basis of mandatory provisions of law such as, for example:
   a) non-compliance with an accepted guarantee or agreed quality,
   b) in accordance with mandatory requirements of product liability,
   c) as a result of a breach of a contractual obligation the fulfilment of which is necessary for the performance of the contract and upon which the customer should normally be able to rely (so-called material contractual obligation (wesentliche Vertragspflichten)).

Any right to claim damages for breach of a material contractual obligation is, however, limited to typical, foreseeable damage insofar as liability is not unlimited in accordance with the mandatory provisions of law. No change in the burden of proof to the disadvantage of the customer shall result from the above provisions.

13 Limitation Period

Any and all claims of the customer, regardless of the legal basis, shall ex- pire, subject to sentence 2, in one year calculated from the time of the commencement of the statutory limitation period. In cases of applicable mandatory law the periods set out at law shall apply.

14 Confidentiality; Secrecy

The customer shall treat as confidential all information provided by NAF in connection with this contract and its performance. The customer is enti- tled to use such information only for the purposes set out in the contract. Obligations of confidentiality shall not apply to any information in relation to which the customer can prove that such was already generally known or where, without any infringement of the obligation of confidentiality by the customer, such became generally known or where such information was already known to the customer at the time of receipt without any infringement of the duty of confidentiality or, where such information was lawfully received from a third party without any obligation of confidential- ity or, where the customer, without using any information provided in relation to this contract, developed such information itself. The obligations set out under sentence 1 shall also in force even after the ending of the contract regardless of the reasons for which the contract ended.

15 Making Available of Software; Software Use

15.1 Insofar as any software is contained in a delivery, the customer shall be granted a non-exclusive licence to use the delivered software including the documentation thereon. Such shall be provided for use in relation to the specific object of the delivery. Any use of the software on more than one system is not permitted.