

# **neoshapes SA**

## **GENERAL TERMS AND CONDITIONS OF SALE**

**Effective as of 1<sup>st</sup> August 2023**

### **1. SCOPE OF APPLICABILITY**

1.1 These General Terms and Conditions of Sale ("GTCS") apply to all sales of goods by us notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from you. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by us unless and until we expressly confirm our acceptance in writing.

1.2 We reserve the right to change these GTCS at any time. We will give you thirty calendar days' notice of any changes by posting notice on our website.

### **2. OFFERS, PURCHASE ORDERS AND ORDER CONFIRMATIONS**

2.1 All offers made by us are open for acceptance within fifteen calendar days from the date of issue, unless otherwise specifically stated therein, and are subject to the availability of the goods offered.

2.2 All purchase orders issued by you shall specify as a minimum the type and quantity of goods requested, applicable unit prices, delivery place and requested delivery dates. No purchase order shall be binding on us unless and until confirmed by us in writing.

### **3. PRICES AND TERMS OF PAYMENT**

3.1 The prices for goods shall be those set forth in our order confirmation. All prices are exclusive of taxes, impositions and other charges, including, but not limited to, sales, use, excise, value added and similar taxes or charges imposed by any government authority.

3.2 Unless expressly stated otherwise in our order confirmation, payment for goods shall be made within 7 days of delivery, without offset or deduction. In case of precious metals, payment is due one working day after issuance of our order confirmation.

3.3 You must submit such financial information from time to time as may be reasonably requested by us for the establishment or continuation of payment terms. We may in our sole discretion at any time change agreed payment terms without notice by requiring payment, cash in advance or cash on delivery, bank guarantee, letter of credit or otherwise.

3.4 If you fail to pay any invoice within seven calendar days of the due date of payment, we may suspend delivery of any purchase order or any remaining balance thereof until payment is made or terminate delivery of any purchase order or any remaining balance thereof by providing written notice of termination to you within seven calendar days of the expiration of

the grace period. Further, we may charge you interest from the due date to the date of payment at the rate of 1 ½ % per month. This shall be in addition to, and not in limitation of, any other rights or remedies to which we are or may be entitled at law or in equity.

3.5 Title to goods delivered shall remain vested in us and shall not pass to you until the goods have been paid for in full. If you fail to pay any invoice within fourteen calendar days of the due date of payment, we may retake the goods covered by the invoice. You must insure all goods delivered to their full replacement value until title to the goods has passed to you.

## **4. TERMS OF DELIVERY AND LATE DELIVERY**

4.1 Unless expressly stated otherwise in our order confirmation, all deliveries of goods shall be ex-factory in accordance with Incoterms 2010. The risk of loss of or damage to goods shall pass to you in accordance with the agreed delivery term.

4.2 The delivery dates of goods shall be those set forth in our order confirmation. If we fail to deliver goods within thirty calendar days of the agreed delivery date, you may terminate the applicable purchase order in whole or in part (as to those goods affected by the delay) by providing written notice of termination to us within seven calendar days of the expiration of the grace period.

4.3 We reserve the right to make delivery in instalments.

## **5. ACCEPTANCE OF GOODS**

5.1 You must inspect goods delivered upon receipt. You are deemed to have accepted goods delivered unless written notice of rejection specifying the reasons for rejection is received by us within five calendar days after delivery of the goods.

## **6. WARRANTY**

6.1 We warrant that upon delivery, the goods purchased hereunder will conform in all material respects to the applicable manufacturer's specifications for such goods and will be free from material defects in workmanship, material and design under normal use. The warranty does not cover damage resulting from misuse, negligent handling, lack of reasonable maintenance and care, accident or abuse by anyone other than us.

6.2 With respect to goods which do not conform to the warranty our liability is limited, at our election, to (i) refund of the purchase price for such goods less a reasonable amount for usage, (ii) repair of such goods, or (iii) replacement of such goods.

6.3 We make no other warranty, express or implied, with respect to goods delivered hereunder, and the warranty constitutes our sole obligation in respect of any lack of conformity of goods delivered hereunder (except title). In particular, we make no warranty with respect to the merchantability of goods delivered or their suitability or fitness for any particular purpose.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 Insofar as it is necessary, you grant us a licence to use any and all intellectual property and other rights which may be required for the purposes of producing the goods to your design and specifications and/or the performance by us of our obligations under these GTCS.

7.2 You undertake to procure for our benefit a letter of authorisation from any company, body or authority responsible for granting licences, rights, powers, authority and capacity for the manufacture of the goods by us.

7.3 You warrant that the production of the goods to your design and specification and/or the performance by us of our obligations under these GTCS will not be an infringement of any third party's right (including copyright, design right, trademark or other intellectual property right, whether registered or unregistered) and will not be unlawful or illegal or in breach of any regulatory code.

7.4 You shall indemnify us against any and all loss, damages, costs and expenses, including attorney's fees, sustained us arising out of or in connection with any breach by us of the warranty in clause 7.3 above.

7.5 At our request and at your own expense, you shall provide all reasonable assistance to enable us to defend any claim, action or proceedings arising out of any claim that our production and/or delivery of the goods to your design and specifications and/or the performance by us of our obligations under these GTCS infringes any third party's right (including copyright, design right, trade mark or other intellectual property right, whether registered or unregistered) or is unlawful or illegal or in breach of any regulatory code.

## **8. LIMITATION OF LIABILITY**

8.1 Neither of us will be entitled to, and neither of us shall be liable for, indirect, special, incidental, consequential or punitive damages of any nature, including, but not limited to, business interruption costs, loss of profit, removal and/or reinstallation costs, re-procurement costs, loss of data, injury to reputation or loss of customers. Your recovery from us for any claim shall not exceed the purchase price for the goods giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise.

8.2 We shall not be liable for any claims based on our compliance with your designs, specifications or instructions or repair, modification or alteration of any goods by parties other than us or use in combination with other goods.

## **9. FORCE MAJEURE**

9.1 Either party shall be excused from any delay or failure in performance if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of war, fire, insurrection, strikes, lockouts or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the parties' respective obligations shall resume. In the event the interruption of the excused party's obligations continues for a period in excess of thirty calendar days, either party shall have the right to terminate the applicable contract(s) of sale, without liability, upon thirty calendar days' prior written notice to the other party.

## **10. MISCELLANEOUS**

10.1 The United Nations Convention for the International Sale of Goods shall not apply to these GTCS or to any contracts of sale entered into between us.

10.2 No waiver of any provision of these GTCS shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either party to enforce any provision of these GTCS shall not constitute a waiver of such provision or any other provision(s) of these GTCS.

10.3 Should any provision of these GTCS be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the parties and enforced as modified. All other terms and conditions of these GTCS shall remain in full force and effect and shall be construed in accordance with the modified provision.

10.4 These GTCS and all contracts of sale entered into between us shall be governed by and construed in accordance with the laws of Switzerland without giving effect to any choice of law or conflict of law provisions. Any suits, actions or proceedings that may be instituted by either of us against the other shall be instituted exclusively before the competent courts of Switzerland, however, without prejudice to our right to bring suits, actions or proceedings in any other court which would have jurisdiction if this provision had not been incorporated into these GTCS.