



General Terms and Conditions (GTC)

for commercial purposes

2019 version

1. Scope of application

1.1. These General Terms and Conditions (in the following GTC) shall apply to contracts relating to deliveries, sales and services that are concluded between NiLAB GmbH (in the following NiLAB) and its customers, provided the customer is entrepreneur as defined by § 1 Austrian Consumer Protection Act (KSchG). The present GTC apply as well to all future supplementary or follow-up orders, even if they are not explicitly referred to by these.

1.2. The customer's general terms and conditions shall apply only if expressly accepted by NiLAB in writing. Non-response on our part to the customer's terms and conditions is not deemed to be consent or acknowledgement in any case.

2. Offers, conclusion of contracts

2.1. NiLAB's offers are **not binding**.

2.2. The contract with the customer is deemed to be concluded if NiLAB upon **receipt of the customer's order** issues a **confirmation in writing or dispatches the product or starts with the execution of the order**.

2.3. Any information about NiLAB's products and services that is provided in catalogues, price lists, brochures, advertisements on trade fair stands, circulars, advertising mailings or other media (information material) is only relevant if expressly made part of the contract.

2.4. The product to be delivered and/or the service to be rendered is exclusively determined in the contract. Any further service rendered by NiLAB, as the case may be, **shall be remunerated separately** by the customer according to clause 3.3.

2.5. Estimates of costs are provided **without warranty** and are not free of charge.

3. Prices

3.1. Unless otherwise agreed, NiLAB's prices are **factory gate prices without packaging**. Prices stated are to be understood as **plus the statutory value added tax** that is applicable in each case.

3.2. Any costs for packaging, transport, loading and shipping are borne by the customer as well as customs and insurance. The mode of transport or shipping shall be defined by the contractual agreement. NiLAB is entitled to charge the customer an additional fee amounting to 1,5% of the gross order value for paperboard packaging and an additional fee amounting to **€ 30,00 per box for shipping in wooden boxes**. NiLAB is obliged to take back packaging only if this is explicitly agreed.

3.3. Any service that is not covered by the order shall be **remunerated separately** by the customer. This shall apply particularly to **consulting services** performed by telephone and to services rendered by NiLAB in the context of **launching the object of purchase** (motor) delivered by NiLAB and/or the connection of the object of purchase (motor) with customer's devices (so-called supplementary services). The customer shall be charged for supplementary services an **hourly fee amounting to € 100 net** per working hour performed, irrespective of whether the supplementary service is rendered at the customer's place, via telephone or by tele maintenance. In the event NiLAB shall render supplementary services at the customer's place, the customer shall also bear the necessary travel expenses and overnight allowances of the personnel deployed by NiLAB.

3.4. NiLAB is entitled to adapt the contractually agreed remuneration if changes have occurred to the extent of at least 10 % in respect of (a) wage costs through law, directive, wage agreement, company agreements or (b) other cost factors that are necessary for performance, such as procurement costs of the materials to be used, on the basis

of recommendations of joint committees or of amendments to national or world market prices for raw materials, exchange rates etc. since the contract was concluded. The adaptation shall be made to the extent to which the actual manufacturing costs at the time the contract was concluded change in relation to those at the time of the actual performance, unless NiLAB is in delay.

3.5. The remuneration in the case of continuing obligations is agreed to be index-adjusted according to the 2010 consumer price index and remuneration is thereby adjusted accordingly. The month in which the contract was concluded is taken as the starting basis.

4. Goods provided

4.1. If equipment or other materials are provided by the customer, NiLAB is entitled to charge the customer 10 % of the value of the material or equipment provided, as a **handling surcharge**.

4.2. Such equipment and other materials provided by the customer are not covered by the warranty. The quality and serviceability of goods provided are the customer's responsibility.

5. Payment

5.1. Unless otherwise agreed in the contract, **one third of the remuneration shall be due on conclusion of the contract, one third at the start of performance, and the rest following completion of performance**.

5.2. Entitlement to deduct a discount requires express written agreement.

5.3. Payment references stated by the customer on the bank transfer documentation are not binding for NiLAB.

5.4. If the customer is in default of payment, NiLAB is entitled to either insist on the fulfilment of the contract, suspend fulfilment of its obligations from this contract until the customer has met his obligations and make payable the whole purchase price or declare, after expiration of an adequate grace period, withdrawal from the contract.

5.5. In the event of withdrawal from the contract due to the customer's default of payment, NiLAB is entitled to charge, irrespectively of the customer's fault, the customer a **penalty amounting to 30% of the gross order value**. NiLAB reserves the right to demand from the customer further damages related to the default of payment.

5.6. Where a payment deadline is exceeded, even if this is only in respect of an individual part of the performance, **any price reductions granted (discounts, allowances etc.) are forfeited** and shall be subsequently invoiced to the customer.

5.7. In the event of a default of payment, the customer undertakes to reimburse NiLAB for the necessary and appropriate costs of collecting payment (reminder costs, collection charges, lawyers' fees etc.). NiLAB shall charge the customer **€ 20,00 for every collection letter** sent by NiLAB.

5.8. In accordance with section 456 of the Austrian Commercial Code (UGB), in the case of default of payment, NiLAB is entitled to charge the customer default **interests amounting to 9.2 % points above the base interest rate**.

5.9. The customer is entitled to offset only insofar as counter-claims have been established by the courts or acknowledged by NiLAB.

6. Credit rating check

6.1. The customer declares his express agreement that his data may be communicated exclusively for the purpose of protection of creditors to the officially privileged creditor protection associations Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) and Kreditschutzverband von 1870 (KSV).

7. Customer's duty of cooperation

7.1. NiLAB's duty to render performance begins, at the earliest, as soon as all technical details have been clarified, the customer has created the technical and legal prerequisites, provided the agreed down-payments or securities, and fulfilled his contractual obligations of preliminary work and cooperation.

7.2. In case NiLAB is requested to launch the produced item (motor) and/or to connect it to a customer's device, the customer is liable for ensuring that the necessary constructional, technical and legal preconditions are existing.

7.3. The customer is also liable for ensuring that the technical installations, such as supply lines, cabling, networks and the like are in a technically perfect and operational condition and are compatible with the objects of purchase (motors) produced by NiLAB.

7.4. NiLAB is entitled but not obliged to check these installations in return for separate remuneration.

7.5. In particular, before the start of launching and/or connection work, the customer must provide the necessary information on the location of concealed supply lines for electricity, gas and water or similar installations, escape routes, other obstructions of a structural nature, possible sources of danger, as well as every other technical information necessary for the launching, without being asked to do so.

7.6. The customer bears sole responsibility for the design and functionality of parts and devices that have been provided as well as for their compatibility with the object of purchase (motor) delivered by NiLAB. There is **no duty imposed on NiLAB to examine** any documents provided by the customer and NiLAB's liability in relation to this is excluded.

7.7. The customer is not entitled to assign claims and rights from the contractual relationship without NiLAB's written consent.

8. Execution of work

8.1. NiLAB is not obliged to take account of subsequent modification and extension wishes of the customer.

8.2. Minor amendments to NiLAB's performance that are objectively justified and are reasonable for the customer are deemed to be approved in advance.

8.3. If, after the contract has been awarded, there is an amendment of or supplement to the order for whatever reason, then the delivery / performance deadline is extended by an appropriate period of time.

8.4. Objectively justified part-deliveries and part-performance are permitted and can be invoiced separately.

8.5. If delivery on call is agreed, the object of performance / object of purchase is deemed to have been called six months after ordering at the latest.

9. Deadlines for supply and performance

9.1. Deadlines and dates for supply / performance are binding for NiLAB only if they have been established in writing. Any divergence from this requirement of the written form must likewise be in writing.

9.2. Deadlines and dates are postponed in the event of force majeure, strike, unforeseeable delay by our ancillary suppliers that is not caused by NiLAB, or other comparable occurrences that lie beyond NiLAB's sphere of influence, by that period of time during which the corresponding occurrence lasts.

9.3. If the start of performance or the performance are delayed or interrupted by circumstances that are attributable to the customer, in particular on account of infringement of the duty of cooperation pursuant to point 7, performance deadlines are extended accordingly and completion dates are postponed accordingly.

9.4. For the storage of materials and equipment and the like that is necessitated by this, NiLAB is entitled to charge 10% of the gross order value for each month or part-month of delay in performance, with the customer's obligations of payment and acceptance remaining unaffected by this.

9.5. In the event of a withdrawal from the contract on account of delay, the customer must grant a grace period by means of registered letter whilst simultaneously threatening withdrawal.

10. Transfer of Risk

10.1. The risk passes to the customer as soon as NiLAB holds the object of purchase, the material or the work ready for collection in our works or warehouse, posts it, or hands it over to a carrier.

11. Delay in acceptance

11.1. If the customer delays acceptance for longer than 1 weeks (refusal of acceptance, delay in preliminary work or otherwise, no call made within an appropriate time in the case of delivery on call), and if in spite of an appropriate grace period having been set, the customer has not ensured the elimination of the circumstances attributable to him which delay or prevent the performance being rendered,

NiLAB is entitled in the case of a valid contract to deploy otherwise the equipment and materials that have been specified for the performance of the work, insofar as in the event that the performance of the work is continued, NiLAB procures these again within a time appropriate to the respective circumstances.

11.2. In the case of delay in acceptance on the part of the customer, NiLAB is likewise entitled, in the case of insistence on fulfilment of the contract, to store the goods at NiLAB's premises, for which NiLAB is entitled to a storage fee pursuant to point 9.4.

12. Reservation of title

12.1. The goods that NiLAB supplies, assembles or otherwise hands over **remains NiLAB's property until payment has been made in full.**

12.2. Reselling is permitted only if that has been notified to NiLAB in good time beforehand, stating the name and exact address of the buyer and NiLAB agrees to the reselling. In the event that NiLAB agrees, the claim for the purchase price is deemed to be assigned to NiLAB here and now.

12.3. Until full payment of the remuneration or purchase price has been made, the customer must indicate this assignment in his books and on his invoices, and must inform his debtors accordingly. On request, he must make available to NiLAB all documents and information such as are necessary to assert the assigned receivables and claims.

12.4. If the customer falls into arrears in payment, NiLAB is entitled, whilst setting an appropriate grace period, to demand surrender of the goods that are subject to retention of title.

12.5. The customer must notify NiLAB immediately before the opening of bankruptcy proceedings in relation to his assets or the attachment of our goods that are subject to retention of title.

12.6. The customer declares his explicit understanding that in order to assert NiLAB's claim to reservation of ownership, NiLAB is permitted to enter the location of the goods that are subject to retention of title.

12.7. The customer shall bear any costs that are necessary and appropriate for pursuing expedient legal remedies.

12.8. In the assertion of reservation of ownership, a withdrawal from the contract exists only if this is explicitly declared.

12.9. NiLAB is permitted to dispose of the goods subject to retention of title that have been reclaimed as NiLAB sees fit and to its best advantage.

12.10. Until all NiLAB's claims have been paid in full, the object of performance / object of purchase must not be pledged, assigned or otherwise burdened with the rights of third parties. In the case of seizure or other availment, the customer is obliged to point out NiLAB's right of ownership and to notify NiLAB immediately.

13. Industrial property rights of third parties

13.1. For deliverables that NiLAB produces according to customer documentation (design specifications, drawings, models or other specifications etc.), the customer warrants that the production of these deliverables does not infringe the industrial property rights of third parties is assumed exclusively by the customer.

13.2. If the industrial property rights of third parties are nonetheless claimed, NiLAB is entitled to suspend production of the deliverables at the customer's risk until the rights of third parties have been clarified.

13.3. The customer shall **indemnify NiLAB** for any loss or damage in this regard.

13.4. NiLAB is entitled to demand from customers appropriate advances on costs for any legal costs.

13.5. Likewise, NiLAB can claim from the customer the refunding of necessary and expedient costs that NiLAB has incurred.

14. NiLAB's intellectual property

14.1. Deliverables and related production specifications, plans, sketches, estimates of costs and other documents as well as software that have been provided by NiLAB or which have arisen through NiLAB's contribution shall remain NiLAB's intellectual property.

14.2. Use thereof, in particular distributing, copying, publishing and making them available, even including the

copying only of extracts, as well as imitation, processing or exploitation, requires NiLAB's explicit consent.

14.3. The customer furthermore undertakes to maintain confidentiality in relation to third parties of the knowledge he has acquired from the business relationship.

15. Warranty

15.1. The warranty period for NiLAB's services is one year from handover.

15.2. In the absence of any agreement to the contrary (e.g. formal acceptance), the time of handover is the time of completion, at the latest when the customer has taken over the work into his control or has refused to take it over without giving reasons. With the date on which the customer is notified of completion, in the absence of justified refusal of acceptance the work is deemed to be taken into his control.

15.3. If a joint handover is envisaged, and if the customer does not attend the handover appointment that has been notified to him, the handover is deemed to have taken place on that day.

15.4. The remedying of a defect that has been claimed by the customer does not represent acknowledgement of a defect.

15.5. The customer must always prove that the defect existed at the time of handover.

15.6. For the remedying of defects, the customer must make the delivery item available to NiLAB without culpable delay, and must grant NiLAB the opportunity for assessment by an expert appointed by NiLAB.

15.7. Notices of defects and complaints of all kinds must be notified immediately (at the latest after 3 working days) to NiLAB in writing, with as accurate a description of the defect as possible and stating the possible causes, otherwise the warranty claims are forfeited. The goods or work that are the subject of complaint must be handed over by the customer, insofar as this is feasible. NiLAB is entitled to carry out or have carried out any examination regarded as necessary, even if this renders the goods or work pieces unusable.

15.8. If the defects alleged by the customer are unjustified, he is obliged to compensate NiLAB for expenses incurred for establishing freedom from defects or remedying defects.

15.9. Any utilisation or processing of the defective deliverable that carries the risk of further damage, or makes elimination of the cause more difficult or prevents it, must be stopped by the customer without delay.

15.10. **Transportation and travel costs arising in connection with the rectification of defects are to be borne by the customer.** On request by NiLAB, the customer must provide, free of charge, the necessary workers, energy and premises, and must cooperate in accordance with point 7.

15.11. The customer must grant NiLAB at least two attempts to rectify the defect.

15.12. NiLAB can avert a request for rescission through improvement or an appropriate price reduction, insofar as this does not relate to a significant and unrectifiable defect.

15.13. If the deliverables are produced on the basis of details, drawings, plans, models or other specifications of the customer, NiLAB provides warranty only for the execution according to specifications.

15.14. The fact that the work is not fully suitable for the agreed use does not constitute a defect if this is based exclusively on actual circumstances that differ from the information that was available at the time of performance.

15.15. Likewise it is not a defect if the customer's technical installations, such as supply lines, cabling, networks etc. are not in a technically perfect and operational condition, or are not compatible with the items supplied.

16. Liability

16.1. Outside the application area of the Austrian Product Liability Act (PHG), NiLAB shall be liable only for wilful misconduct or gross negligence. Any liability for lightly negligent acts (bodily injuries excluded) as well as compensation for consequential and indirect damages, pure financial loss, loss of production, costs of capital, costs of replacement energy, loss of energy, data and information, loss of profit and for damages arising from claims by third parties shall be excluded.

16.2. NiLAB's liability for gross negligence is limited to the net order value or to the maximum liability amount of a liability

insurance NiLAB has possibly taken out, whichever amount is lower.

16.3. This limitation also applies in respect of damage to items that NiLAB has accepted for processing.

16.4. Claims for damages must be filed before the courts within two years or are otherwise forfeited.

16.5. The restrictions or exclusions of liability also include claims against NiLAB's employees, representatives and contractors for damage which they cause to customers without reference to a contract on their part with the customer.

16.6. NiLAB's liability is excluded for damage due to improper handling or storage, overuse, failure to follow operating instructions and installation instructions, defective assembly, commissioning, servicing, maintenance by the customer or third parties not authorised by NiLAB, or natural wear and tear, insofar as this caused the damage. Liability is also excluded for failure to carry out necessary servicing.

16.7. If and insofar as the customer can claim insurance payments for damage for which NiLAB is liable, through an indemnity insurance that he has taken out himself or that has been taken out for his benefit (e.g. liability insurance, fully comprehensive cover, transport, fire, interruption of operation and others), the customer undertakes to claim the insurance payment and NiLAB's liability to the customer is limited to this extent to the disadvantages that the customer suffers by claiming on this insurance (e.g. through higher insurance premiums).

16.8. Those product characteristics are owed which, in respect of the licensing regulations, operating instructions and other product-related guidelines and information (in particular also monitoring and servicing), can be expected of NiLAB, third-party manufacturers or importers by the customer, taking into account his knowledge and experience. The customer as reseller must take out adequate insurance for product liability claims and must indemnify NiLAB for any loss or damage with regard to claims for recourse.

17. Severability clause

17.1. In the event that individual parts of these GTC are invalid, the validity of the other parts shall not be affected by this.

18. General

18.1. **Austrian law** applies with exclusion of the UN Convention on the international sales of goods and the conflict of law provisions.

18.2. The place of performance shall be at **NiLAB's registered offices.**

18.3. The exclusive place of jurisdiction for all disputes arising from the contractual relationship or future contracts between NiLAB and the customer is the court which is materially competent for **9020 Klagenfurt am Wörthersee.**

18.4. The customer must inform NiLAB immediately in writing of any changes to his name, company name, address, legal form or other relevant information.