

NOVENCO BUILDING & INDUSTRY A/S - General Terms of Sale and Delivery

1. Application

These General Terms of Sale and Delivery (hereinafter referred to as "Terms") shall apply to all supplies and deliveries of Equipment made by NOVENCO BUILDING & INDUSTRY A/S (hereinafter referred to as "NOVENCO BUILDING & INDUSTRY") unless otherwise explicitly agreed and confirmed in writing. No terms and conditions contrary to the Terms are binding on NOVENCO BUILDING & INDUSTRY unless specifically accepted in writing.

"Agreement" shall mean NOVENCO BUILDING & INDUSTRY's order confirmation with attachments (technical specifications, delivery schedule, arrangement drawings, marked-up drawings, approval documentation, certificates, hydraulic calculations, installation plan, product literature, test reports, shipping information, list of documentation, etc.) and these Terms.

"Equipment" shall mean the equipment explicitly described in the Agreement.

2. Product information

All information and data contained in general product information material and price lists as well as other information from NOVENCO BUILDING & INDUSTRY shall be binding only to the extent explicitly stated in the Agreement.

3. Drawings and Descriptions

All and any drawings and technical documents relating to the Equipment or to the production of same which one party hands over to the other party before or after entering into the Agreement shall belong to the submitting party and cannot, without the consent of that party, be used for any other purposes than for the installation, start-up, operation and maintenance of the Equipment. Apart from these applications, the documents mentioned may not, without the consent of the submitting party, be used, copied, reproduced or handed over to a third party or in any other way be brought to the knowledge of a third party.

4. Tests

4.1 FAT tests (Factory Acceptance Test)

Failing agreement to the contrary, FAT tests shall be carried out at NOVENCO BUILDING & INDUSTRY's production sites within normal working hours. Provided that technical requirements for the tests are not specified in the Agreement, these shall be carried out in accordance with the usual practice and procedures of NOVENCO BUILDING & INDUSTRY.

NOVENCO BUILDING & INDUSTRY shall bear all expenses in connection with its normal FAT tests taking place at NOVENCO BUILDING & INDUSTRY's production sites.

If FAT tests are to be carried out at a place selected by the purchaser, the purchaser shall bear all cost incurred (e.g. freight, insurance, packing, container leasing etc.) for transporting the Equipment to such place and returning the Equipment to NOVENCO BUILDING & INDUSTRY's production site as well as all traveling and accommodation expenses for the representatives of NOVENCO BUILDING & INDUSTRY.

4.2 Start-up and Commissioning

Start-up and commissioning of Equipment are not included in the stated price, unless otherwise is explicitly mentioned in the Agreement.

5. Delivery

Delivery clauses agreed upon shall be construed in accordance with the Incoterms in force at the time of the conclusion of the Agreement.

Unless agreed otherwise, delivery shall take place "Ex Works".

6. Payment

The purchaser shall pay progress payments, i.e. one third on conclusion of the Agreement and one third on receipt by the purchaser of NOVENCO BUILDING & INDUSTRY's notification that the bulk of Equipment to be supplied is ready for delivery. The balance shall be paid on delivery of the Equipment.

Failing explicit agreement to the contrary, payments shall take place into a bank account specified by NOVENCO BUILDING & INDUSTRY. The purchaser is not entitled to set off any amount unless he has title for the claim or the claim is undisputed by NOVENCO BUILDING & INDUSTRY.

In the event that the purchaser does not settle any outstanding amount in due time NOVENCO BUILDING & INDUSTRY is irrespective of whether NOVENCO BUILDING & INDUSTRY at its discretion decides to maintain or cancel the purchase entitled to suspend all deliveries to the purchaser until all amounts due have been settled. Further, NOVENCO BUILDING & INDUSTRY shall be entitled to claim a penalty interest of 2% per commenced month counting from the due date and to add any expenses incurred for dunning and administration fees.

All amounts fall due for payment on the date of invoice current month plus 25 days.

NOVENCO BUILDING & INDUSTRY is at any time entitled to set off claims made by the purchaser against NOVENCO BUILDING & INDUSTRY against NOVENCO BUILDING & INDUSTRY's receivable on the purchaser.

Taxes, duties or levies etc. imposed on the Equipment shall be paid by the purchaser.

7. Retention of Title

The Equipment sold under the Agreement shall remain the property of NOVENCO BUILDING & INDUSTRY until paid for in full, to the extent that such retention of title is valid.

8. Delay of Delivery Time

8.1 Delayed Delivery

NOVENCO BUILDING & INDUSTRY will to the extent possible deliver purchased Equipment as at the agreed delivery date. Irrespective of the reason for a delay of delivery, however, the Purchaser has no remedies for breach against NOVENCO BUILDING & INDUSTRY in this respect and is not entitled to raise any claims for indirect losses or other consequential losses according to clause 11.

8.2 Late Pickup

Orders picked up later than 1 week after the order is ready for pick-up will incur storage fees. A startup fee of 300 EUR is applied once the order becomes eligible for storage fees.

For each started week that the order remains in storage beyond the 1-week threshold, a storage fee of 1% of the order value is applied.

9. Defects

9.1 Warranty for Shortcomings

NOVENCO BUILDING & INDUSTRY shall at its discretion replace or repair any parts that may prove to be unsuitable owing to errors in design, faulty materials, or workmanship ascertained within 12 months from the date when the Equipment is put into service, however, a maximum of 18 months from the date of delivery agreed, always provided that the Equipment is properly stored under roof and in dry environment.

Replacement parts will be delivered ex-works. Failing agreement to the contrary, the purchaser shall bear the costs of removing the defective part and the fitting of a new part as well as the traveling and accommodation expenses if repair is to be carried out at a place selected by the purchaser.

For parts replaced or repaired by a NOVENCO BUILDING & INDUSTRY fitter, NOVENCO BUILDING & INDUSTRY shall undertake the same warranty as for the original Equipment for a period of 12 months from replacement or repair. This does not apply to the other parts of the Equipment.

Defective parts that have been replaced shall on demand be placed at the disposal of NOVENCO BUILDING & INDUSTRY freight prepaid by the purchaser and become NOVENCO BUILDING & INDUSTRY's property.

Defects and errors in the Equipment must only be repaired by a third party with the prior written consent of NOVENCO BUILDING & INDUSTRY. NOVENCO BUILDING & INDUSTRY's warranty does only apply if a NOVENCO BUILDING & INDUSTRY fitter has supervised and approved the final installation of the Equipment.

Failing agreement to the contrary, NOVENCO BUILDING & INDUSTRY takes no responsibility for the systems connected to in- and outlet of the unit or for their effect on the unit, unless these systems were supplied and installed by NOVENCO BUILDING & INDUSTRY.

NOVENCO BUILDING & INDUSTRY's warranty does not cover the consequences of any kind of corrosion, ordinary wear, caused by dust particles, the use of other lubricants than those prescribed in NOVENCO BUILDING & INDUSTRY's Operating Instructions, misuse, and the like.

The purchaser is not entitled to cancel the purchase or claim damages due to defects cf. clause 11 if NOVENCO BUILDING & INDUSTRY remedies the defects within reasonable time.

9.2 Complaints

The purchaser shall upon delivery promptly inspect the Equipment and notify NOVENCO BUILDING & INDUSTRY in writing of any claims. A complaint must be made without undue delay after the defect was or should have been found. A failure to transmit in writing any complaint to NOVENCO BUILDING & INDUSTRY within thirty days after the defect was or should have been found shall be deemed a waiver of such claim.

If the purchaser has complained of a defect and it turns out that no defect can be demonstrated for which NOVENCO BUILDING & INDUSTRY can be held responsible, NOVENCO BUILDING & INDUSTRY shall be entitled to receive a compensation for the work and costs caused by the complaint.

10. Product Liability

10.1 Personal Injury

NOVENCO BUILDING & INDUSTRY shall only be liable for personal injury if the injury is proved to be due to the negligence and default of NOVENCO BUILDING & INDUSTRY or others for whom NOVENCO BUILDING & INDUSTRY is liable.

10.2 Damages to Movables or Immovables

NOVENCO BUILDING & INDUSTRY shall not be liable for damage to immovables or movables occurring while the Equipment is in the possession of the purchaser. Neither shall NOVENCO BUILDING & INDUSTRY be liable for damage to products manufactured by the purchaser or to products of which the purchaser's products form a part. As regards damage to immovables or movables meant for commercial use it must be proved that NOVENCO BUILDING & INDUSTRY or any other person(s) for whom NOVENCO BUILDING & INDUSTRY is responsible is guilty of gross negligence.

10.3 Product Liability towards a third Party

If NOVENCO BUILDING & INDUSTRY should incur product liability towards a third party, the purchaser shall be obliged to indemnify NOVENCO BUILDING & INDUSTRY to the same extent as NOVENCO BUILDING & INDUSTRY's liability is limited pursuant to the stipulations of clauses 10.1-10.2 and 11.

10.4 Third Party's Claim

If a claim for damages as described in this clause 10 is lodged by a third party against one of the parties, the latter shall forthwith inform the other party thereof. NOVENCO BUILDING & INDUSTRY and the purchaser shall mutually be obliged to let themselves be summoned to the court or arbitral tribunal which examines claims against either of them based on damage or loss alleged to have been caused by the Equipment. The liability as between NOVENCO BUILDING & INDUSTRY and the purchaser shall always be settled in accordance with clause 10 and 11.

10.5 Product liability Insurance

NOVENCO BUILDING & INDUSTRY's product liability can in no event exceed the insurance cover according to Certificate of NOVENCO BUILDING & INDUSTRY's product liability insurance in force at any time, including the maximum amount allowed in the product liability insurance.

10.6 Return

1. Return of purchased products can only take place after written agreement with Novenco Building & Industry A/S in each individual case, and will only be possible for current standard products in undamaged/unbroken original packaging, for which the order number must always be provided. Special/custom designed and customized products can therefore not be returned.
2. Returns are at the sender's expense and risk. For products that are returned, an administration deduction is calculated in the price starting with min. 25% of sale price.
3. Products with an invoice value of less than DKK 1,500 excluding VAT cannot be returned.

11. Damages and Consequential Damages

NOVENCO BUILDING & INDUSTRY shall irrespective of the alleged basis (defects, product liability etc.) of a claim in damages only be liable in damages due to gross negligence.

Any compensation payable for direct damages can under no circumstances exceed the invoice price for the Equipment in question.

NOVENCO BUILDING & INDUSTRY shall under no circumstances be liable for any indirect damage or loss, such as but not limited to, operating losses of every description, loss of earnings, loss of time, loss of profit, business interruption or punitive damages or fines.

NOVENCO BUILDING & INDUSTRY is furthermore not liable for losses suffered due to recalling and replacing Equipment that has been resold.

12. Exemption from Liability (Force Majeure)

The following circumstances shall involve exemption from liability provided that these prevent fulfillment of the Agreement or make fulfillment unreasonably troublesome: labour disputes, such as strike, lock-out and boycott, and any other circumstance beyond the control of the parties, such as fire, war, insurrection and civil commotion, terrorism, mobilization or calling up for military service to a corresponding extent, requisition, seizure, trade and currency restrictions, lack of means of transport, scarcity of materials, manpower and electricity, breakdown of machinery, natural catastrophes, adverse weather conditions and defects or delays in deliveries by sub-suppliers attributable to one or more of the circumstances mentioned in this clause 12.

The party who wants to plead relief owing to force majeure shall without delay notify the other party in writing about the occurrence and the expected cessation of such circumstances.

Any of the parties may terminate the Agreement by a notice in writing to the other party, if fulfillment of the Agreement is hampered for more than 6 months. Neither party may advance claims irrespective of the basis thereof against the other party due to termination in accordance with this clause 12.

In the event that NOVENCO BUILDING & INDUSTRY's sale of the Equipment might be covered by Council Regulation (EC) No 1334/2000 with later amendments NOVENCO BUILDING & INDUSTRY reserves its right to cancel the purchase in accordance with this clause 12.

13. Intellectual Property Rights

NOVENCO BUILDING & INDUSTRY does not carry any responsibility for violation of any third party's intellectual property rights at the use of the Equipment.

14. Disputes and Law Governing the Agreement

14.1 Choice of law

Danish Law shall apply to these Terms.

14.2 Dispute resolution

In the event of any disputes between the parties relating to the Equipment delivered under the Agreement, any action taken by the purchaser against NOVENCO BUILDING & INDUSTRY shall be brought before an arbitration tribunal established in accordance with the rules of procedure of the Danish Institute of Arbitration. If NOVENCO BUILDING & INDUSTRY should find it necessary to institute proceedings against the purchaser, such action may, at NOVENCO BUILDING & INDUSTRY's option, be brought before the Maritime and Commercial Court in Copenhagen or before an arbitration tribunal established in accordance with the rules of procedure of the Danish Institute of Arbitration. The seat of any arbitration tribunal shall be Næstved, Denmark. The language of the arbitration shall be English.