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## SALES AND DELIVERY TERMS

### **1 Scope and applicability**

- 1.1 The following Sales and Delivery Terms of Nytech Isolering A/S apply un-less otherwise expressly derogated from in writing to all offers, sales, deliveries, installation work and services, hereafter referred to as the goods.
- 1.2 Any specification by the Customer of general or special terms in tender documents, orders, letters of acceptance, purchase terms etc. is not considered a derogation from these terms which prevail over the Customer's general or special terms, unless the derogations have been accepted by Nytech Isolering A/S in writing.

### **2 Offers/orders**

- 2.1 Any agreement between Nytech Isolering A/S and the Customer is not deemed to have been concluded, until Nytech Isolering A/S has submitted an order confirmation. Any objections raised by the Customer against the contents of the order confirmation must be in writing and reach Nytech Isolering A/S within one week from the date of the order confirmation. If this time-limit is exceeded, the agreement is deemed to have been concluded on the terms stated in the order confirmation.

### **3 Technical specifications, product information etc.**

- 3.1 All information in leaflets, catalogues, price lists etc. on weight, dimensions, capacity, performance and other technical data are approximations and only binding, if expressly referenced in the agreement.

### **4 Prices**

- 4.1 The final price will appear from Nytech Isolering A/S' order confirmation. All prices are exclusive of VAT, customs duty and any other indirect taxes, unless otherwise agreed between the parties and quoted in the order confirmation.
- 4.2 Nytech Isolering A/S reserves the right to adjust confirmed prices if, during the period until delivery, changes occur that are beyond the control of Nytech Isolering A/S, such as changes to customs tariffs, currency rates, indirect taxes and increases in the price of raw materials etc.

### **5 Payment terms**

- 5.1 The purchase sum is payable on or before the date stated in the invoice as the final date for payment. This also applies to delivery by instalments, if such instalments are invoiced separately.
- 5.2 Failure to observe the time for payment will result in the invoice amount carrying interest at a rate of 2 % per month or part of a month from the latest final date for payment, until the outstanding amount has been credited to Nytech Isolering A/S' bank account.



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## **6 Delivery**

6.1 Delivery is ex works Nytech Isolering A/S (INCOTERMS 2010) unless otherwise agreed in writing in each specific case and stated in the order confirmation.

## **7 Delivery times and delays**

7.1 Delivery times are fixed by Nytech Isolering A/S and stated in the order confirmation. A 30 days' postponement of the shipping date caused by Nytech Isolering A/S' affairs is in all respects deemed to be delivery on time and does not entitle the Customer to claim remedy for breach of contract against Nytech Isolering A/S, unless the order confirmation expressly specifies a fixed delivery time for the entire delivery or any instalments thereof.

7.2 If a fixed delivery time is expressly agreed, Nytech Isolering A/S is entitled to extend it by fourteen working days, calculated from expiry of the agreed fixed delivery time, and delivery within this time limit is in all respects deemed to be delivery on time.

7.3 If Nytech Isolering A/S exceeds the above stated time limits, cf. Clauses 7.1 and 7.2, the Customer is entitled to cancel the purchase in writing, if Nytech Isolering A/S has proved unable to deliver within an extended time limit of not less than ten working days set by the Customer, and if the Customer has informed Nytech Isolering A/S that further failure to deliver within the time limit will result in termination of the agreement.

7.4 If the Customer elects to terminate the agreement, the Customer is entitled only to a return of any payments made for the relevant delayed delivery. In case of an instalment that is part of a larger consignment, the Customer is therefore not entitled to a return of any payments made for previously delivered and paid instalments. The Customer may not claim any other remedies for breach of contract owing to such delay, and the Customer is thus prevented from claiming compensation of any kind, including compensation for direct loss or operating loss, consequential loss or other indirect loss.

7.5 Notwithstanding Clause 7.3, the Customer is not entitled to cancel the purchase, if delay in delivery is caused by an event stated in Clause 14. In such case, the delivery time is extended by the duration of such event.

7.6 In the above stated case, Nytech Isolering A/S must promptly notify the Customer of any changes in the delivery time.

## **8 Delay caused by circumstances within the Customer's control**

8.1 If a delay is caused by circumstances within the Customer's control, including but not limited to the Customer's change of configuration or specifications of requirements, delay in delivery of technical specifications etc., Nytech Isolering A/S' delivery time is extended by the duration of such delay.

8.2 If delivery is made impracticable because the Customer is unable or refuses to take the delivery of the goods at the agreed delivery time, the goods will remain in Nytech Isolering A/S' warehouse or any other place notified by Nytech Isolering A/S at the Customer's expense and risk. Moreover the



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invoice will be issued as if delivery has taken place and the default interest rate in clause 5.2 will apply.

## **9 Duty of inspection and notice of defects**

- 9.1 The Customer is obliged to promptly make a thorough inspection of the goods on receipt.
- 9.2 If the Customer ascertains any defects, the Customer must promptly and not later than three days after receipt give Nytech Isolering A/S notice in writing of the defects relied upon. In case of latent defects, the time limit is extended to twelve months after delivery. It is the Customers responsibility to control delivered spare parts before assembly.
- 9.3 If the Customer fails to give due notice of defects, he forfeits his right to rely on such defects.

## **10 Product liability**

- 10.1 Nytech Isolering A/S' liability to the Customer for product damage is limited to DKK 5 million for damage to goods for non-commercial use. Accordingly, Nytech Isolering A/S is not liable to the Customer for any damage to buildings, goods for commercial use and other goods or operating loss and any other indirect or direct loss.
- 10.2 The Customer must accept being brought before the court of law or the arbitration tribunal hearing claims raised against Nytech Isolering A/S by reason of damage or loss allegedly caused by the goods delivered.

## **11 Termination or amendment of an agreement**

- 11.1 Termination or amendment of an agreement is subject to approval in writing by Nytech Isolering A/S. Nytech Isolering A/S may make its approval of termination or amendments conditional on the Customer's compensating Nytech Isolering A/S for any costs and losses caused by such termination or amendment, but at a minimum an amount equalling 15% of the agreed purchase price, excluding VAT, if the agreement is terminated or amended within twelve months after formation of the agreement, and at a minimum an amount equalling 20% of the agreed purchase price, excluding VAT, if the agreement is terminated or amended twelve months or more after formation of the agreement.

## **12 Liability for installation and service work**

- 12.1 A Nytech Isolering A/S delivery does not include installation service and running-in unless specifically agreed.
- 12.2 For installation agreements, delivery is deemed to have taken place, when Nytech Isolering A/S notifies the Customer that installation has been completed. The risk of accidental damage to the installed goods passes to the Customer on notice of completion. If the Customer puts the delivered goods into service before notice of completion, the Customer is liable for any damage, loss or waste that is not caused by Nytech Isolering A/S' affairs.
- 12.3 If the installation or service work on the relevant parts proves to be defective, Nytech Isolering A/S is, free of liability, entitled to elect either to remedy the defect or to pay compensation equalling the amount that it would cost the Customer to have the defect remedied locally, always provided that



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Nytech Isolering A/S has accepted the price quoted in writing by a third party for remedying the defect.

### **13 Warranty**

#### **13.1 Scope of warranty**

13.1.1 The warranty covers defects of goods and parts thereof.

13.1.2 The warranty does not cover normal wear and tear, disrepair or incorrect handling, (including overload or overvoltage), including batteries, negligence, accidental damages, non-authorized modifications, unauthorized use or programming; inappropriate maintenance or connection, storage, transportation or installing; any kind of use of the equipment over the capacity and limits established by the manufacturer or under the conditions different from those re-commended; failures caused after the failure or defect had or should have been detected; batteries, lamps and fuses damages; damages due to a use of parts not supplied or manufactured by the manufacturer.

#### **13.2 Warranty period**

13.2.1 Nytech Isolering A/S' warranty is limited to a period of 12 months from commissioning. The warranty will however expire no later than 18 months after delivery. Delivery is to be understood as the ex-works delivery date agreed between the Customer and Nytech Isolering A/S.

13.2.2 The warranty enters into force at the date of commissioning of the goods.

13.2.3 The customer must notify Nytech Isolering A/S the exact commissioning date. The notification must be made by returning the "Certificate of Warranty" to Nytech Isolering A/S. The "Certificate of Warranty" will be attached to the order confirmation.

13.2.4 If notification is not made, commissioning date is the ex-works delivery date agreed between the Customer and Nytech Isolering A/S.

#### **13.3 Nytech Isolering A/S' rights and obligations**

13.3.1 If a consignment or parts thereof prove to be defective, Nytech Isolering A/S is, free from liability, entitled to elect to 1) remedy the defect, 2) replace the delivery with goods of a similar quality, or 3) cancel the relevant agreement and return the purchase price received on surrender of the items delivered.

13.3.2 If Nytech Isolering A/S A/S offers to remedy the defect or replace the goods, including replacement of part of the goods, cf. section 13.3.1, the Customer is not entitled to cancel the purchase or claim compensation for the defect, whether or not the Customer suffers a direct or indirect loss, including operating loss, or claim other remedies for breach of contract.

13.3.3 The warranty will only be given after the technical study of the defective parts. The technical study and repair or replacement will be made in a place assigned by Nytech Isolering A/S, either at Nytech Isolering A/S' premises or at an authorised technical assistance network. The warranty does not cover transportation costs to the premises of technical study.

13.3.4 Technical study and repair can, if agreed upon, be made at the Customers premises. The Customer



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will in these situations be charged all Nytech Isolering A/S' costs connected thereto including travelling expenses and costs of personnel.

- 13.3.5 Any part sent or service carried out before the acceptance of the warranty will be invoiced to the Customer. If the warranty is accepted, credit note will be issued regarding the components covered by the warranty. Other parts and services must be paid by the Customer.
- 13.3.6 All replaced parts have to be returned to Nytech Isolering A/S at the Customers expense and will become Nytech Isolering A/S' property. If parts are not returned to Nytech Isolering A/S, the warranty claim will be refused.

#### **13.4 Customer obligations**

- 13.4.1 All claims based on this warranty must be processed through Nytech Isolering A/S authorised sellers, who will process the claim.

#### **13.5 Repaired parts**

- 13.5.1 The repaired or replaced parts have a six (6) month warranty. The replaced part and date of replacement will be identified in accordance with the report of claim or other written admittance of the claim issued by Nytech Isolering A/S.
- 13.5.2 This will not modify the warranty of other elements.

#### **13.6 Limitation of liability**

- 13.6.1 If Nytech Isolering A/S elects to cancel the agreement and return the purchase price received on surrender of the items delivered, cf. section 13.3.1, the Customer is not entitled to claim compensation for such cancellation or claim other remedies for breach of contract.
- 13.6.2 Nytech Isolering A/S' liability is limited to the price paid by the Customer for the goods delivered on which the claim is based.
- 13.6.3 Nytech Isolering A/S is not liable for any loss of whatsoever nature suffered the Customer, including compensation for indirect loss or operating loss, loss of profits, consequential loss or other indirect loss, including demurrage, if any.
- 13.6.4 Nytech Isolering A/S is not liable for any delay caused by remedial action or replacement delivery. Nor is Nytech Isolering A/S liable for defects resulting from incorrect use or operation of the goods delivered or for defects in the goods delivered resulting from incorrect or insufficient information on the part of the Customer.
- 13.6.5 If remedy of a defect takes the form of replacement or repairs, Nytech Isolering A/S will only indemnify the price of the defective component. Accordingly, Nytech Isolering A/S will not indemnify the costs of technician visits or any operating loss or additional indirect loss.
- 13.6.6 The warranty does not cover the rental costs of substitution equipments during repair period nor connection costs and/or connection works of the products with other equipments of the Customer.

#### **14 Force majeure**



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- 14.1 Nytech Isolering A/S assumes no liability for non-performance of its obligations under offers already made or prospective orders and for delays caused by force majeure, acts of God, war, riots, civil unrest, acts of terrorism, seizure, central or local government intervention, fire, strikes, lockouts, import or export restrictions, industrial disputes, sub-suppliers' non-delivery or defective or delayed delivery, full or partial breakdown of means of transportation, lack of manpower, fuel or motive power, engine breakdown or accidents during processing or testing or any other circumstances beyond the control of Nytech Isolering A/S that may delay or prevent manufacture and delivery of the goods.
- 14.2 In any of the above stated circumstances, Nytech Isolering A/S is entitled to postpone delivery, cf. Clause 7.5 above, until the event that prevents performance has ceased, and delivery at the postponed delivery time is deemed in all respects to be delivery on time.
- 14.3 If the event that prevents delivery is expected to have a duration exceeding three months, Nytech Isolering A/S is however entitled to cancel offers and agreements already made without this being deemed breach of contract and without Nytech Isolering A/S being held liable for direct or indirect loss, including operating loss or damage caused by this.
- 15 Jurisdiction and governing law**
- 15.1 This contract shall be governed by the laws of Denmark, including the provisions of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG).