

## **Terms and conditions of delivery and payment for NOON GmbH**

### **1. General terms**

1.1 The following terms are part and parcel of all contracts concluded between ourselves and the purchaser, insofar as the customer is an entrepreneur within the meaning of § 14 section 1 of the German Civil Code (BGB).

1.2 Any terms and conditions of purchasing that the purchaser may have do not apply, unless they are expressly accepted by us in writing.

1.3 We are entitled to assign claims arising from our business relationship.

### **2. Application of law, legal venue, place of performance**

2.1 German law exclusively applies to the entire legal relations with the purchaser, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

2.2 The place of performance for all services arising from the sale/delivery contract is Limbach-Oberfrohna.

2.3 Zwickau is the exclusive legal venue in dealings with the category of people of § 38 section 1 of the German Code of Civil Procedure (ZPO) for any legal proceedings resulting from this contract. If the purchaser does not have a general legal venue in Germany or if his place of residence is not known at the time of lodgment of the claim, the exclusive legal venue for any legal proceedings is the court having jurisdiction for the area where our company is located.

### **3. Quotations, confirmation of order and prices**

3.1 Our quotations are subject to change without notice with regard to quantity, price and delivery period.

3.2 Orders are only deemed by us to be binding if and so far as we have given a confirmation of order. Our employees are not authorized to make verbal arrangements that contradict the contract concluded in writing and these contractual terms.

3.3 Our prices are net prices.

3.4 Block orders are permissible. Block orders are concluded for larger quantities and longer periods of time. The seller must be informed by the purchaser in good time of the deadlines sale is passed over to the purchaser, insofar as no obligation to deliver is agreed upon in detail. In the case of delivery free domicile, an obligation to send is agreed upon as a matter of principle.

3.5 If dispatch is delayed as a result of circumstances for which we are not responsible, the risk of the loss or deterioration is passed over to the purchaser upon announcement of the readiness for dispatch.

3.6 The goods are only insured against damages in transit at the purchaser's express request, and at his expense.

3.7 Delivery dates specified by us are not binding, unless they are expressly termed binding.

#### **4. Withdrawal**

4.1 Our agreements are made subject to correct and punctual supply to ourselves, i.e. we are entitled to withdraw if our supplier does not fulfil the purchase agreement entered into with us prior to concluding the respective contract of sale for reasons for which we are not responsible.

4.2 Furthermore, we are entitled to withdraw from contracts if procurement of the goods compared to the point in time of concluding the contract is hindered as a consequence of catastrophes, events of war or similar circumstances to such an extent that adherence to the contract is no longer reasonable for us.

4.3 In the case of disturbances at our factory or warehouse or impeding action by the authorities for which we are not responsible, the time for delivery is extended by the duration of the disturbance. Furthermore, we are entitled to withdraw from contracts if the disturbance lasts for a period of over four weeks.

4.4 We are furthermore entitled to withdraw from the contract if an application is made for the commencement of insolvency proceedings against the purchaser's assets. If facts that suggest a considerable deterioration of the purchaser's financial standing become known to us after conclusion of the contract and prior to the delivery of the goods, we are entitled to make delivery of the goods dependent upon advance payment, in revision of the contractually agreed dates of payment. If the purchaser then fails to pay within two weeks of such a request, we are also entitled to withdraw from the contract. Such facts are, in particular, if execution orders are pronounced against one of the business accounts or if a renowned business information company (such as Bürgel or Creditreform) recommends the rejection of a business relationship.

4.5 Deviations in quality, colour, width, weight, finish or pattern that are customary in the trade, or slight, technically unavoidable deviations, are regarded as being according to contract.

4.6 The purchaser's claims cannot be assigned due to a defect in the goods.

#### **5. Delivery dates**

5.1 Following the expiration of the delivery date, an additional period of the length of the delivery date, but 18 days at the longest, for completing the delivery shall commence without notification. The additional period for completing the delivery of stock goods that are ready for dispatch is 5 days at the most. After the expiration of the additional delivery date, withdrawal from the contract with the exclusion of damage claims is regarded as having been executed if the seller, during the additional period for completing the delivery or after its expiration, requests notification from the purchaser of whether he demands of the contract and he does not demand the contract to be fulfilled within a period of 14 further days. Firm deals are not transacted.

5.2 If the purchaser wishes to claim compensation or withdraw from the contract for failure to perform, he must set the seller an additional period for completing the delivery of 4 weeks with the threat of rejecting fulfillment after expiration of the deadline. The additional period for completing the delivery is counted from the day on which the notification of the purchaser is

received in writing. These terms also apply in the case that the purchaser demands fulfillment of the contract in accordance with sub clause 5.2.

5.3 Prior to the expiration of the additional period for completing the delivery, the purchaser cannot make any claims on the basis of delayed delivery.

## **6. Payment**

6.1 The invoice is issued on the day of the delivery or provision of the goods.

6.2 Payments are always used to settle the oldest outstanding accounts payable plus the default interest accrued. Other conditions of amortisation can only be agreed upon amicably.

6.3 Upon exceeding the payment period, the purchaser defaults, without the need for a reminder. From this point in time, we charge default interest amounting to 8 percent above the base lending rate of the European Central Bank. We reserve the right to assert further damage caused by delay. Together with third-party goods subject to retention of title, we gain joint ownership of the new product or of the combined stock in proportion to the value of our goods subject to retention of title to the other goods at the time of the connection, blending or processing. We do not assert a claim to the increase in value brought about by the blending or processing.

6.4 a) The purchaser herewith relinquishes to us his claim with all ancillary rights from the resale of our goods subject to retention of title as well as the goods in our joint ownership in accordance with sub clause 6.3 as security for all of the claims to which we are entitled vis-à-vis the purchaser at the time of the resale.

6.4 b) If the goods, which in accordance with sub clause 3 are in our joint ownership, are resold, only the part of the claim that corresponds to the value of our share of joint ownership is considered to be relinquished.

6.4 c) If the purchaser sells the claim from the resale within the framework of non-recourse factoring, he relinquishes to us the claim that takes its place against the factor.

6.4 d) If the value of the claims relinquished to us as security exceeds our claims against the purchaser by more than 20%, we are obliged, at the purchaser's request, to release any securities beyond that.

6.4 e) The purchaser is entitled to collect the relinquished claims on our behalf. This authorization expires, however, if the purchaser defaults in his payments to us, or if an application is made for the commencement of insolvency proceedings against the customer's assets.

6.4 f) We are furthermore entitled to deprive the purchaser of the right to collect if facts that suggest a considerable deterioration of the financial standing become known to us. 5. sub clause 5.4 applies accordingly.

6.4 g) In this case, the purchaser is obliged to give us all of the necessary information to assert our rights against his customer within 3 days of receipt of a written request, in particular to announce the customer and to hand over the necessary certificates and documents.

6.5 The purchaser is only entitled to resell our goods subject to retention of title as well as the goods in our joint ownership in accordance with sub clause 2 and in accordance with sub

clause 3 within the framework of his customary business volume and only provided that the purchase-money claim from the resale in accordance with sub clause 4 is transferred to us.

6.6 The purchaser is obliged to adequately insure our goods subject to retention of title as well as the goods in our joint ownership in accordance with sub clause 2 and in accordance with sub clause 3 against loss and damage caused by fire, theft, water or similar risks, and to provide evidence of insurance coverage to us at our request. The purchaser herewith property damage and financial losses. In the case of deliveries and/or wrong deliveries, we are not liable for consequential damage, apart from the cases mentioned in sub clause 1.

6.7 We are only liable for data loss to the extent of the time and effort required to restore the data during proper data storage.

## **7. Returns and handling charges**

Returns and handling charges are not accepted; the resulting costs are not accepted.

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