

General Terms of Delivery and Payment of NOON GmbH

1. General terms

- 1.1 The following terms and conditions form an integral part of all contracts concluded between ourselves and the Buyer, provided the customer is an entrepreneur within the meaning of Section 14 (1) of the German Civil Code [BGB].
- 1.2 Purchase terms of the Buyer shall not apply unless these terms are expressly accepted by us in writing.
- 1.3 We are entitled to assign the claims arising from our business relationship.

2. Application of law, place of jurisdiction, place of performance

- 2.1 All legal relationships with the Buyer shall be governed exclusively by German law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 2.2 Place of performance for all services under the purchase/supply agreement is Limbach-Oberfrohna.
- 2.3 In dealings with persons falling within the meaning of Section 38 (1) of the German Code of Civil Procedure [ZPO], the exclusive place of jurisdiction for all disputes arising from the contractual relationship is Zwickau. Where the Buyer has no general place of jurisdiction in Germany or if its usual place of residence at the time action is brought is not known, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the court having substantive jurisdiction for our registered place of business.

3. Quotations, order confirmation and prices

- 3.1 The quantities, prices and delivery periods stated in our quotations are subject to change.
- 3.2 We shall only be bound to orders if and when an order confirmation has been issued. Our employees are not authorised to make any verbal agreements that contradict written agreements and these terms and conditions of contract.
- 3.3 Our prices are net.
- 3.4 Call-off orders are permissible. Call-off orders are concluded for larger quantities and a longer period of time. The Buyer must inform the Seller in good time in writing of the call-off dates for such orders. The final date of the call-off order period is binding on the Buyer. The Buyer shall inform the Seller in good time of its requirements with regard to the assortment of colours. We reserve the right to drop particular product characteristics or designs for which there is insufficient demand.
- 3.5 Delivery shall only be made under the terms specified in the confirmation of cover provided by our credit insurer. Any follow-up sales exceeding the volume of the insured sum shall only be made subject to the proviso that confirmation of cover is provided by our credit insurer.

4. Shipping/delivery

- 4.1 Our deliveries are ex works unless agreed otherwise. The Buyer shall bear the shipping costs unless agreed otherwise. Any special packaging requirements shall also be at the Buyer's expense.
- 4.2 Freight is calculated ex-factory for deliveries made from an external warehouse; alternatively, a flat-rate additional warehouse fee can be charged.
- 4.3 As soon as the Seller has handed over the goods to the forwarding agent, the carrier or other person designated to deliver the goods (who may also be one of our own employees), the risk of loss or deterioration of the purchase item passes to the Buyer, insofar as an obligation to be performed at the creditor's place of business has not been agreed in individual cases. For all carriage-free deliveries, an obligation to send is generally agreed.
- 4.4 If the shipment is delayed due to circumstances beyond our control, the risk of loss or deterioration passes to the Buyer upon notification that the goods are ready for dispatch.
- 4.5 The goods shall be insured against transport damage only at the express request and expense of the Buyer.
- 4.6 Delivery dates specified by us are non-binding unless it is expressly indicated that these are binding.

5. Withdrawal

- 5.1 Our agreements are subject to the correct and punctual delivery of the required materials to us; that is to say, we are entitled to withdraw from the contract if our supplier fails to honour a purchase agreement concluded prior to the respective sales agreement for reasons beyond our control.
- 5.2 We are also entitled to withdraw from contracts if, due to disasters, acts of war or similar circumstances, the procurement of goods is hindered to such a degree – compared to the time at which the contract was concluded – that we can no longer reasonably be expected to adhere to the contract.
- 5.3 In the event of disruptions within our factory or warehouse that are beyond our control and in the event of obstructive measures by the authorities, the delivery period shall be extended by the duration of the disruption. We are also entitled to withdraw from contracts if the disruption lasts longer than four weeks.
- 5.4 We are further entitled to withdraw from the contract if an application for the opening of insolvency proceedings over the Buyer's assets has been filed. If, subsequent to the conclusion of the contract and prior to delivery of the goods, facts indicating a substantial deterioration in the Buyer's financial situation come to our knowledge, we are entitled to make the delivery of the goods contingent upon advance payment in deviation from the contractually agreed payment terms. If the Buyer fails to make payment within two weeks upon request, we are also entitled to withdraw from the contract. By way of example and not of limitation, the declaration of garnishment proceedings over one of the business accounts or a recommendation from a notable credit agency (e.g. Bürgel or Creditreform) to turn down a business relationship would constitute such facts.

6. Warranty

- 6.1 If the Buyer is a merchant, Section 377 of the German Commercial Code [HGB] shall apply subject to the proviso that the notice of defects must be issued in writing. All complaints must be accompanied by a sample, the respective part number and the corresponding delivery note number.
- 6.2 The Buyer's warranty claim shall be initially limited to supplementary performance. If this supplementary performance fails twice, the Buyer shall be entitled to all other statutory warranty claims. The same shall apply if we have not yet commenced supplementary performance despite having been set a deadline by the Buyer, which must be at least one month.
- 6.3 We are at liberty to provide supplementary performance either by way of repair (subsequent improvement) or replacement (subsequent delivery) unless the Buyer has any special and significant interests that would exclude either of these options.
- 6.4 Complaints of any kind are excluded once the goods have been cut or any other form of processing has commenced.
- 6.5 Customary or minor, technically unavoidable deviations in quality, colour, width, weight, finishing or design shall be deemed to comply with the contract.
- 6.6 The Buyer is not permitted to assign its claims due to a defect in the goods.

7. Delivery periods

- 7.1 Once the delivery period has expired, a subsequent delivery period of the same length as the delivery period, however no longer than 18 days, shall commence without notification. The subsequent delivery period shall be 5 days at the most for stock items that are ready for shipping. Once the subsequent delivery period has expired, the contract shall be deemed to have been cancelled to the exclusion of all claims for compensation if, during or after the subsequent delivery period, the Buyer is asked to declare if it insists on performance of the contract and the Buyer fails to do so within a further period of 14 days. No fixed-date transactions shall be made.
- 7.2 If the Buyer intends to claim compensation due to non-performance or to withdraw from the contract, it must set the Seller a subsequent delivery period of 4 weeks with the threat of refusing performance after this deadline has passed. The subsequent delivery period shall be calculated from the date on which the Seller receives the Buyer's written notification. These provisions shall also apply in the event that the Buyer insists on performance of the contract pursuant to Clause a. Sentence 2.
- 7.3 The Buyer may not assert any claims for late delivery before the subsequent delivery period has expired.

8. Payment

- 8.1 Invoices will be issued on the date of delivery or provision of the goods. Our payment terms are 30 days net.
- 8.2 The period for payment shall commence on the date of the invoice.
- 8.3 In all cases, payments shall be used to settle the oldest debts plus the accumulated default interest. Other repayment provisions can only be established by mutual agreement.
- 8.4 The Buyer shall be in default, without any reminder notice being required, once the deadline for payment has passed. From this point in time, we shall charge default interest at a rate of 8 per cent above the base rate of the European Central Bank. We reserve the right to claim further damages due to default.
- 8.5 If the Buyer is in default of payment, we shall be entitled to make any further deliveries that have already been agreed subject to advance payment.
- 8.6 The Buyer is not entitled to offset counterclaims against our claims, unless the counterclaim is undisputed or has been established with legally binding effect. The Buyer is similarly not entitled to exercise a right of retention unless the counterclaim is undisputed, has been established with legally binding effect or is based on the same contractual relationship.

9. Retention of title

- 9.1. The delivered goods shall remain our property until such time as the purchase price and all other debts owed to us by the Buyer have been paid in full. The retention of title shall still apply even if individual claims to which we are entitled have been included in a current account and the balance has been drawn and accepted.
- 9.2 If the delivered goods subject to retention of title (hereinafter referred to as 'retained goods' for the sake of simplicity) are treated or processed by the Buyer, this treatment or processing shall be performed on our behalf as the 'manufacturer' within the meaning of Section 950 BGB.
- 9.3 If our retained goods are processed with goods that are the property of the Buyer or together with other retained goods belonging to third parties, we shall acquire co-ownership of the new item (hereinafter 'co-owned goods') or the mixed item in the ratio of the value of our retained goods to the other goods at the time the goods were combined, mixed or processed. We assert no claim to any increase in value resulting from the mixing or processing.
- 9.4 a) The Buyer hereby assigns to us its receivables together with all ancillary rights from the resale of our retained goods, as well our co-owned goods under Clause 9.3, by way of security for all claims against the purchaser to which we are entitled at the time the goods are resold.
- 9.4 b) In the event that our co-owned goods under Clause 9.3 are resold, only that portion of the receivables that is equivalent to the value of our co-ownership share shall, however, be deemed to have been assigned.
- 9.4 c) If the Buyer sells the receivables from the resale within the context of non-recourse factoring, it shall assign the substitute claim against the factor to us.
- 9.4 d) If the value of the receivables assigned to us by way of security exceeds our claims against the Buyer by more than 20%, we shall, at the Buyer's request, be obliged to release the excess securities.
- 9.4 e) The Buyer is entitled to collect the assigned receivables on our behalf. This entitlement shall, however, cease to apply if the Buyer is in default of payment to us or if an application for the opening of insolvency proceedings over the customer's assets has been filed.
- 9.4 f) We shall also be entitled to revoke the Buyer's right to collect the receivables if any facts indicating a substantial deterioration in the Buyer's financial situation come to our knowledge. Clause 5.4 shall apply accordingly.
- 9.4 g) In this case, the Buyer shall – within 3 days of receipt of a written request – be obliged to provide us with all information necessary to assert our rights against the Buyer's customers, including in particular but without limitation, to name the customers and to hand over the necessary certificates and documents.

- 9.5 The Buyer shall be entitled to resell our retained goods and the goods that are our property under Clause 9.2 or our co-owned goods under Clause 9.3 only in the normal course of business and only subject to the proviso that the receivables from the resale pursuant to Clause 9.4 are assigned to us.
- 9.6 The Buyer shall be obliged to adequately insure our retained goods and the goods that are our property under Clause 9.2 or our co-owned goods under Clause 9.3 against loss and damage due to fire, theft, water damage and similar risks and to provide us with proof of insurance cover upon request. The Buyer hereby assigns to us all claims for compensation to which it is entitled against insurance companies or other persons obliged to pay compensation, including claims on a pro rata basis.
- 9.7 If our retained goods or the goods that are our property under Clause 9.2 or our co-owned goods under Clause 9.3 are damaged in any way or accessed by third parties, the Buyer shall inform us of this immediately.

10. Liability

- 10.1 We shall be liable:
 - For claims under the German Product Liability Act,
 - For damages resulting from injury to life, limb or health for which we, our legal representatives or vicarious agents are responsible, and
 - For all damages caused by us, our legal representatives or vicarious agents either intentionally or through gross negligence.
- 10.2 In cases of slight negligence, we shall be liable only for breaches of essential contractual obligations except in the cases set forth in Clause 10.1. With regard to property damage and financial losses, our liability in such cases shall be limited to damage that is foreseeable and typical for this type of contract. With regard to deliveries and/or faulty deliveries, we shall not be liable for consequential damages except in the cases set forth in Clause 10.1.
- 10.3 With regard to data loss, we shall only be liable for the expense and effort necessary to restore the data from a data back-up made in accordance with the proper procedure.

11. Returns and processing costs

Returns and processing costs will not be recognised; the resulting costs will not be recognised.

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