

General Terms and Conditions for Sale and Delivery (GTC) of noble-pac GmbH

<p>1 Scope</p> <p>1.1 The following GTC of noble-pac GmbH exclusively apply to all deliveries and services of noble-pac GmbH. They also apply to all future business relationships of noble-pac GmbH with the customer. Any general terms and conditions of the customer that are conflicting with or deviating from the present GTC shall not be recognised, unless noble-pac GmbH has explicitly approved their applicability in writing. The present GTC also apply if noble-pac GmbH, while having knowledge of such general terms and conditions of the customer that are conflicting with or deviating from the present GTC, provides services to the customer without reservation.</p> <p>1.2 The GTC of noble-pac GmbH exclusively apply to businesses.</p> <p>2 Offers; Conclusion of Contract</p> <p>2.1 Offers of noble-pac GmbH are without obligation unless noble-pac GmbH explicitly declares the offer binding in an individual case.</p> <p>2.2 The customer is bound by its order for 14 days after receipt of the order.</p> <p>2.3 Orders submitted by the customer shall be deemed to be accepted by noble-pac GmbH if confirmed in writing via order confirmation by noble-pac GmbH or its representatives within 14 days after receipt of the order.</p> <p>3 Written Form</p> <p>All agreements on deliveries and services of noble-pac GmbH have to be set out in writing. Declarations of travellers, sales agents or employees of noble-pac GmbH with regard to the conclusion and/or amendment of a contract are only binding for noble-pac GmbH after express written confirmation, by noble-pac GmbH, e.g. in the form of an order confirmation.</p> <p>4 Time of Delivery and Services; Delivery Method; Partial Delivery; Quantity; Default</p> <p>4.1 The relevant point in time for the beginning of agreed delivery periods is the conclusion of the contract. Delivery periods are deemed to be met if the goods are dispatched or the customer has been informed that the goods are ready for dispatch or collection before the expiry of the delivery period.</p> <p>4.2 Unless set out otherwise, noble-pac GmbH determines the delivery method.</p> <p>4.3 Partial deliveries may be made within the agreed delivery periods if they are announced to the customer at least three working days before the planned delivery. The customer may object to a partial delivery if it cannot be reasonably expected from the customer to accept it.</p> <p>4.4 Due to mandatory production requirements, customary surplus or short deliveries of the goods ordered by the customer may occur. noble-pac GmbH is entitled to make such surplus or short deliveries if the customer can reasonably be expected to accept such deviation from the agreed quantity.</p> <p>The quantity actually delivered will be invoiced. The above-mentioned deviations have to be taken into account by the customer when placing an order.</p> <p>4.5 Claims for damages of the customer for default are subject to clause 10 of the present GTC and, for the rest, to the statutory provisions. noble-pac GmbH is not in default as long as the customer itself is in default with its obligations to perform.</p> <p>4.6 In case of default of acceptance by the customer or a violation of other duties to cooperate, noble-pac GmbH is entitled to charge the usual storage costs in accordance with section 354 German Commercial Code (HGB), even when storing goods in one of their own plants, at least, however, 1% of the invoiced amount of the goods for each month of default of acceptance. noble-pac GmbH expressly reserves further claims. If noble-pac GmbH asserts the minimum flat fee provided for in this clause 4.6 above, the customer shall have the right to prove that no or less damage has been incurred.</p> <p>5 Passing of Risk</p> <p>5.1 The risk of accidental loss or accidental deterioration of the goods passes over to the customer upon handover, in case of sale by dispatch upon the delivery of the goods to the person or institution instructed with the transport; this also applies if the transport is made by noble-pac GmbH.</p> <p>5.2 Handover is deemed effected if the customer is in default of acceptance.</p> <p>6 Return of Transportation Aids; Stock Account</p> <p>6.1 noble-pac GmbH maintains a stock account over pallets, cover plates, frames and other transportation aids owned by noble-pac GmbH (hereinafter referred to as Transportation Aids) for the customer and the customer regularly receives account statements for this account.</p> <p>6.2 Upon the delivery of goods by noble-pac GmbH or a person instructed to transport the goods, the customer shall as a rule provide a sufficient amount of Transportation Aids for return. Otherwise the Transportation Aids shall be handed over by the customer directly to noble-pac GmbH or to a person instructed with transport upon the next delivery. The customer shall settle the stock account as soon as possible.</p> <p>6.3 The records on the stock account are maintained based on proof of dispatch. The customer shall confirm receipt of the Transportation Aids received. Returned Transportation Aids are credited to the stock account in favour of the customer. noble-pac GmbH will settle the stock account regularly, usually on a quarterly basis. A debit balance for the customer determined in this way will be invoiced to the customer at the purchase price applicable at the point in time of invoicing and shall be settled by the customer without undue delay.</p> <p>7 Prices; Terms of Payment; Default; Set-off; Withholding of Payment</p> <p>7.1 For deliveries and services of noble-pac GmbH the agreed prices apply plus statutory VAT. As far as the individual contract does not provide otherwise, the invoiced amounts are immediately due for payment and payable within 30 days after the date of the invoice in full without deductions. In case of payment within 14 days after the date of the invoice a discount of 2 % of the invoiced amount may be deducted. As a rule, cash payment shall be deemed agreed. Payment by bill of exchange is not accepted.</p> <p>7.2 In case of payment default of the customer, noble-pac GmbH is entitled to demand annual default interest in the amount of 9 percentage points above the applicable base interest rate (section 247 German Civil Code; BGB). The assertion of a higher damage is not excluded.</p> <p>7.3 In case of an obvious lack of the customer's ability of performance, e.g. due to a deterioration of the customer's financial situation, noble-pac GmbH is entitled to revoke the term or extension of payment originally granted, to claim immediate payment and to assert the statutory claims for the orders not yet completed.</p> <p>7.4 The customer is only entitled to set-off or withhold payment if its counter-claim is determined in a legally binding manner, undisputed or acknowledged.</p> <p>8 Reservation of Ownership; Assignment of Claims</p> <p>8.1 noble-pac GmbH generally reserves the ownership of the goods delivered until the receipt of the full invoice amount for the respective delivery and further until the full payment of all claims by noble-pac GmbH from the business relationship with the customer.</p> <p>8.2 The same shall apply to export deliveries, i.e. to all deliveries into countries outside the country in which we have our head office. In case the laws of such country do not allow for such retention of ownership in the manner as aforementioned, the customer undertakes to provide to noble-pac GmbH equivalent security for all claims of noble-pac GmbH against him.</p> <p>8.3 The customer is obliged to treat the goods that are subject to reservation of ownership with care and in particular to protect them from humidity and damage. The customer has to take out sufficient insurance for the goods at original value and to extend its professional liability insurance to the goods. Upon the request of noble-pac GmbH the customer is obliged to prove the existence of insurance cover. The customer hereby assigns all claims from the insurance policy or against any damaging party to noble-pac GmbH. noble-pac GmbH hereby accepts the assignment.</p> <p>8.4 As long as the reservation of ownership is in place the customer is not entitled to pledge the goods, assign them as security or otherwise dispose of the goods. The customer is entitled to resell and process the goods in the ordinary course of business as long as the customer is not in default of payment. The customer herewith assigns to noble-pac GmbH all claims in the amount of the invoiced amount of the claims of noble-pac GmbH that the customer receives from reselling the goods to third parties; this applies irrespective of whether the goods are resold without or after processing, noble-pac GmbH herewith accepts the assignment.</p> <p>8.5 The customer remains authorised to recover the claims assigned under clause 8.3 even after the assignment. noble-pac GmbH reserves the right to recover the claims if the customer is in default of payment. In this case, noble-pac GmbH may request that the customer discloses the assigned claims and the debtors, provides all information necessary for recovery, hands over any related documents and informs the debtors about the assignment.</p> <p>The customer is obliged to immediately inform noble-pac GmbH in writing of any attachments or other third-party interventions so that noble-pac GmbH can bring a third-party proceeding. noble-pac GmbH is entitled to claim the refund of the in- and out-of-court costs for the third-party proceeding from the customer if the proceeding was successful and the compulsory enforcement against the third party as the debtor was attempted without success.</p>	<p>8.6 The treatment and processing of the goods shall always be made in the name and on behalf of noble-pac GmbH. If the goods are processed with objects that do not belong to noble-pac GmbH, noble-pac GmbH acquires co-ownership of the newly produced good commensurate to the value of the goods delivered by noble-pac GmbH as compared to the value of the other processed objects.</p> <p>8.7 Advance payment transactions - All orders are carried out exclusively in accordance with our general sales and delivery conditions. It is pointed out, that for deliveries made against advance payment, the provisions an extended and expanded retention of title contained in the general terms and conditions of sale and delivery under clauses 8.1. - 8.6 do not apply.</p> <p>9 Warranty for Defects; Drop Shipping; Rights of Regress</p> <p>9.1 The customer's warranty rights are subject to the customer duly fulfilling its obligation of inspection and giving notice of defects in accordance with section 377 German Commercial Code in writing. The customer has to notify noble-pac GmbH in writing of obvious defects without undue delay and at the latest within a period of five working days after receipt of the goods, and of hidden defects without undue delay and at the latest within a period of five working days after discovery of such defects. The relevant point in time for compliance with these periods is the receipt of the notice of defects.</p> <p>The customer bears the full burden of proof regarding all prerequisites for the assertion of claims, in particular for the defect itself, for the point in time of the discovery of the defect, for the defect notice being made in good time and the proper storage of the goods.</p> <p>9.2 If the goods are not delivered by noble-pac GmbH but directly by their supplier or a transport entity instructed by them (drop shipping), the customer has to notify defects in compliance with the above-mentioned periods and requirements to the supplier of noble-pac GmbH and immediately inform noble-pac GmbH thereof in writing. If the supplier is demonstrably unknown to the customer, clause 9.1 applies.</p> <p>9.3 If the customer violates the obligations under clauses 9.1 and 9.2, the assertion of warranty claims with regard to the defect in question is excluded. This does not apply if noble-pac GmbH has fraudulently concealed the defect.</p> <p>9.4 As the sample cartons of noble-pac GmbH are partly manufactured by hand, there may be minor deviations of the delivered goods from the sample cartons.</p> <p>9.5 The goods conform to the agreement in terms of printing and processing if the print result and the build quality are within the tolerances corresponding to the state of the art.</p> <p>9.6 noble-pac GmbH does not assume liability for the fitness for use of the packaging for a specific purpose unless this was expressly assured to the customer in writing.</p> <p>9.7 noble-pac GmbH does not assume liability for defects in goods that are owed to the fact that the customer did not comply with a technical specification issued by noble-pac GmbH with regard to the performance of an act of cooperation.</p> <p>9.8 For defects of the goods that already existed at the point in time of the passage of risk, noble-pac GmbH may – subject to the provisions set out in clauses 9.1 to 9.7 – chose to fulfil their warranty obligation by either rectification or replacement (alternative performance).</p> <p>noble-pac GmbH can predicate the alternative performance towards the customer on the payment of an appropriate partial remuneration for the services provided.</p> <p>The partial remuneration shall be assessed in consideration of the notified defect.</p> <p>9.9 In case of subsequent delivery of goods that are free of defects, the customer is obliged to return the originally delivered, defective goods.</p> <p>9.10 If alternative performance is not successful, if noble-pac GmbH refuses alternative performance or if alternative performance cannot be reasonably expected from noble-pac GmbH, the customer is entitled within the context of the statutory provisions to choose to rescind from the contract in accordance with clause 11 below or to reduce remuneration.</p> <p>9.11 Claims for damages and refund of expenses against noble-pac GmbH for defects are governed by clause 10 of the present GTC.</p> <p>9.12 The customer supports noble-pac GmbH with regard to the detection and rectification of defects as far as the customer is able to do so and it can be reasonably expected.</p> <p>9.13 The customer has no warranty or liability claims for defects that occur as a result of changes made to the goods without approval of noble-pac GmbH.</p> <p>9.14 The warranty period is one year as of the delivery of the goods. This does not apply in case of gross negligence on the part of noble-pac GmbH, the absence of warranted qualities or fraudulent concealing of a defect as well as in case of a culpable injury to life, body or health. In these cases the statutory limitation provisions shall apply. The mandatory provisions for the supplier's recourse (sections 445b, 478 German Civil Code) shall also remain unaffected.</p> <p>10 Liability for Damages and Refund of Expenses</p> <p>10.1 noble-pac GmbH is only liable for damages or refund of expenses – irrespective of the legal reason – if the damage was caused by the culpable violation of a material contractual obligation (cardinal obligation) in a way that jeopardises the achievement of the contractual purpose or can be attributed to intent or gross negligence.</p> <p>10.2 In the event that noble-pac GmbH is liable for the violation of a material contractual obligation in accordance with clause 10.1 above without it being a case of intent or gross negligence, such liability is limited to the extent of damage the occurrence of which noble-pac GmbH had to reasonably expect at the time of the conclusion of the contract due to circumstances they had knowledge of at such point in time.</p> <p>10.3 The aforementioned limitations or exclusions of liability do not apply in case of mandatory provisions for supplier's recourse (sections 445a, 478 German Civil Code), culpable injury to life, body or health, for liability claims under the German Product Liability Act and in case of a contractually agreed non-fault obligation to assume liability or if noble-pac GmbH fraudulently concealed a defect.</p> <p>10.4 Claims for damages become time-barred after one year as of the beginning of the statutory limitation period. This does not apply in case of gross negligence on the part of noble-pac GmbH and in case of a culpable injury to life, body or health. In these cases the statutory limitation provisions shall apply.</p> <p>10.5 To the extent the liability of noble-pac GmbH is excluded or limited pursuant to the provisions above, the same shall apply to the personal liability of its management, employees, representatives or vicarious agents.</p> <p>11 Customer's Right of Rescission</p> <p>11.1 In case of a breach of duty for which noble-pac GmbH is responsible, the customer is entitled to rescind from the contract in accordance with the statutory provisions. The rescission right is excluded if noble-pac GmbH is not responsible for the circumstances giving rise to the rescission right.</p> <p>11.2 If a breach of duty for which noble-pac GmbH is responsible relates to a partial performance, the customer may in case of default, poor performance and impossibility only rescind the entire contract if the remaining performance is not of interest to the customer. In case of a culpable poor performance, rescission is excluded if the breach of duty, in particular a defect, is insignificant.</p> <p>11.3 The rescission right is also excluded if the customer is responsible or partly responsible for the default, poor performance or impossibility as far as noble-pac GmbH is not at contributory fault or the circumstances that are outside the responsibility of noble-pac GmbH arise at a time when the customer is in default of acceptance. In cases of breach of a secondary obligation the customer only has a rescission right if it cannot reasonably be expected of the customer to continue the contract.</p> <p>11.4 The customer's right to rescind the contract in case of partial impossibility that is outside the responsibility of both parties in accordance with clause 11.2 remains unaffected.</p> <p>12 Applicable Law; Place of Jurisdiction</p> <p>12.1 The law of the Federal Republic of Germany applies under exclusion of the UN Convention on Contracts for the International Sale of Goods.</p> <p>12.2 Place of performance and exclusive place of jurisdiction for disputes arising from the business relationship is Dürren.</p>
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Dated: October 2020