

GENERAL BUSINESS TERMS AND CONDITIONS

I. SCOPE OF APPLICATION

These general business terms and conditions shall be applicable in their most recent version to all deliveries and performances to be offered and provided by Noack & Co GmbH (hereinafter referred to as NOACK or “seller”) and to all associated business transactions and other services.

Conflicting and deviating contractual and purchase conditions of the contractual partner (hereinafter also referred to as “buyer”) are not accepted by NOACK and shall be deemed expressly not to have been agreed. This also applies if NOACK has not expressly objected thereto. Actions taken by NOACK as part of its contractual duties shall not be considered to be consent of these purchase conditions that conflict with or deviate from these general business terms and conditions.

Deviating conditions, verbal secondary agreements, amendments of or additions to these conditions as well as attachments and/or enclosures require an expressed written agreement between the two contractual partners. This also applies to a waiver of this formal requirement.

Within the framework of an ongoing business relationship, these general business terms and conditions also apply to future performances as agreed, even if no expressed agreement is concluded in this regard in the future.

Any resellers warrant that these obligations arising from these general business terms and conditions are binding on their respective contractual partners. Resellers shall fully indemnify and hold NOACK harmless in any way from all damages arising from infringements of this obligation.

II. OFFER, ORDER, CONTRACT CONCLUSION

The offers from NOACK are always subject to amendment and are non-binding unless expressly agreed otherwise. Offer and sales documentation, price lists, models, samples, analysis data and other information from the seller are also non-binding unless expressly guaranteed in writing.

Information, recommendations, advice etc. are always non-binding and only have legal implications if expressly confirmed in writing by the seller. Samples are strictly non-binding sample versions. Analysis results are to be viewed only as approximate values unless certain characteristics have been expressly guaranteed in writing. The aforementioned documentation shall exclusively remain the seller's property, shall not be made available to third parties and shall be returned immediately on request at any time

The buyer submits a binding contractual offer of contract to NOACK with its order. NOACK has the right to reject the contract or the order of the contractual partner within 14 days of receipt without giving reasons.

The buyer has the right to withdraw its offer of contract after the expiration of the aforementioned deadline subject to a period of grace of 14 days if NOACK has not confirmed order acceptance.

Both, verbal as well as written contracts or orders are only deemed to have been accepted after receipt by NOACK of a written order confirmation from the buyer. Only the written order confirmation in

connection with these general business terms and conditions is decisive for the contractual content.

Electronic, telephone or verbal additions, amendments or ancillary agreements in regard to contracts and orders also require written confirmation from NOACK to be legally effective.

The conclusion of the contract by NOACK is always made under the reservation of non-fulfillment or only partial fulfillment in case of incorrect, delayed or improper delivery to NOACK by third parties. In case of non-availability or only partial availability of the delivery or service, the buyer shall be informed within a reasonable amount of time and any already received consideration (such as a down payment) (partial) shall be refunded. NOACK shall not be liable for any resulting damages of the contractual partner.

III. CONTRACT WITHDRAWAL, CANCELLATION

The buyer does not have the right to withdraw from a contract without compelling legal reason unless NOACK expressly gives its written consent to this. However, NOACK also expressly reserves the right to claim compensation for any damages even in the case of consent.

In addition to cases of force majeure and the other major reasons listed in paragraph V, the buyer has the right to withdraw from the contract if the seller is in delay with fulfillment of the contract and has not made any fulfillment action despite the laying down of an appropriate secondary deadline of at least 8 weeks.

Improperly returned goods shall be stored by the seller or by a third party commissioned for this at the expense and risk of the buyer. A contractual penalty of 10% of the respective value of the contract or the goods is agreed for the necessary effort associated with the improper return under exclusion of any judicial right of mitigation. The seller however expressly reserves the right to assert claims over and above this.

These provisions also apply to any partial delivery or performance.

NOACK has the right to withdraw from the contract if

- execution of the delivery/performance or an agreed partial delivery/partial performance remains undone or becomes impossible due to a default of acceptance or other reasons within the scope of the buyer's responsibility despite the setting of a secondary deadline of 4 weeks.
- NOACK has justified concerns in regard to the credit worthiness/ability to pay of the buyer, because it is in default of acceptance or performance (payment delay), the seller or a third party is taking legal action or execution, a commercial security paper of the buyer could not be cashed or something similar, and the buyer has not furnished suitable security or made an advance payment despite the request for such.
- adherence with the agreed delivery deadline becomes impossible or unreasonable due to circumstances not under the partners' influence (see paragraph V of the general business terms and conditions). These last mentioned circumstances also apply as a reason for withdrawal if a supplier of the seller is affected by this type of event and the seller is therefore impaired in manufacturing or acquisition.

NOACK has the right to immediate withdrawal from the contract in case of rejection of an application for insolvency procedure for lack of assets or cost-covering property and in case of an insolvency procedure unless this contradicts mandatory statutory provisions (such as § 25b IO [Insolvenzordnung = Insolvency Act]).

If NOACK justifiably withdraws from the contract, in particular pursuant to the aforementioned provisions, or if the contractual partner declares its withdrawal from the contract without justification, NOACK has the option of insisting on the fulfillment of the contract or to agree to the cancellation of the contract; this applies to the affected partial delivery and to all still outstanding performances. In any case, the contractual partner is obligated to pay a flat rate compensation penalty of 10% of the gross invoice amount, not subject to the judge's right of reduction, for warnings, correspondence, warehouse manipulation, identity and quality control. NOACK's right to claim possible damage compensation over and above this remains unaffected.

In case of withdrawal, NOACK also has the right to demand the return of the already delivered goods at the expense and risk of the contractual partner, with a developed reduction of value of the goods in the interim to the detriment of the defaulting contractual partner.

IV. PRICES, PACKAGING,

The exclusively written offers described as binding also apply to binding prices; otherwise changes in pricing and possible discounts are reserved.

If the contract is concluded without any expressed price regulation, NOACK's applicable list prices on the date of the conformation of the contract are deemed to be the agreed prices.

All prices are in the currency listed in the order confirmations and invoices of NOACK.

In each case, the price and payment conditions in NOACK's offers and order confirmations apply (in particular those arising from the contained INCO terms). Unless other agreements are on-hand, the prices are always net prices inclusive of packaging (except for goods that are delivered loose in accordance with customary commercial usage, such as bulk material) and exclusive of value added tax. The value added tax in the respective statutory percentage is added to the net prices and is payable by the buyer. In addition, all levies, fees, customs duties, costs of loading, transport and all other costs and expenses are to be paid by the buyer unless other agreements have been made.

NOACK has the right to adjust prices in case of newly introduced levies, fees, customs duties and tax amendments by federal governmental or inter-governmental regulations.

In case granted discounts or other premiums are due in case of acceptance or payment default, the recalculated amount is immediately due for payment. In the case of a payment or acceptance default of the buyer, NOACK also has the right to make price changes in case of any interim amendment of the calculation principles (such as an interim change of list prices) even in case of binding price agreements.

V. DELIVERY, TRANSFER OF RISK

Deliver times stated in order confirmations start running on the date of the order confirmation. These times, even when they are identified with an explicitly named delivery time, are subject to change and/or suspension if the buyer still has to obtain documentation, official permits, approval of third parties or other clearances, has to provide information or make an agreed advance payment. In these cases, the delivery time starts with the receipt of the necessary pre-payment/information at NOACK.

The delivery conditions in NOACK's offers and in the order confirmations apply in each case (in particular those that arise from the INCO terms referred therein). Unless other agreements are on-hand, delivery is "ex-works" and the place of fulfillment is NOACK's office.

Performance and price risk are transferred on the day on which the goods are to be ready and collected or with handing over to the transport company for the contractual partner.

In case of force majeure, breakdowns in business operations inclusive of raw material shortages, equipment problems, work problems (also due to labor disputes, illness and war), malfunction of communication networks, electricity or fuel problems, fire damage and other circumstances that can have a significant impact on the delivery of the contractual goods, even if these occur with suppliers or subcontractors of NOACK or their sub-suppliers or subcontractors, NOACK shall not be liable even in case of binding agreed delivery terms and times and NOACK shall be relieved from the delivery times and the obligation for complete delivery.

As long as no mode of transport has been agreed, the choice is at the discretion of the seller, which is not subject to the obligation to verify or select the cheapest mode of transport. Commensurate surcharges shall be invoiced separately for express and air freight shipments.

In case the shipment of goods ready for shipment is not possible with no fault of the seller or if it is not wanted by the buyer, all risks are transferred to the buyer, who is also responsible for the costs of provisioning inclusive of all storage costs; the agreed maturities are not impacted by this.

Any claims for compensation by the buyer such as damages due to a delay is expressly excluded in case of a breach of delivery deadline by NOACK.

VI. PAYMENT AND PAYMENT DEFAULT

All goods deliveries and other performances of NOACK are due for payment without any deduction at the latest 30 days after receipt of the invoice. Discounts always require a separate written agreement and are only accepted in their respective context. Payments of the contractual partner are deemed to have been received at the time of receipt in NOACK's business account. NOACK reserves the right to change the payment conditions. Any possible ancillary fees, such as possible transfer and bank fees shall exclusively be borne by the buyer.

If payment by check or bill of exchange has been agreed, these are accepted only as payment on account; all discount, bank levies and fees shall exclusively be borne by the buyer.

In the case of payment default, interest at the rate of 10% p.a. above the basic interest rate (floored) becomes due. All warning and collection costs inclusive of preprocess costs for legal representation and the fees of a collection agency shall be borne by the buyer.

Partial payments are first credited against ancillary costs and expenses, then against interest and finally against the oldest, non-legally enforceable claim. Only after that are they credited against enforceable claims.

In the case that significant worsening of the buyer's asset status develops after acceptance of the contract, in particular with publication of passive processes against the contractual partner and/or rejection of an insolvency procedure due to a lack of assets to cover costs or initiation of execution proceedings, all targeted payment agreements become due and the entire claim is immediately due for payment. Any further deliveries or performances by NOACK shall only be made against prepayment or suitable security against the purchase price at NOACK's option, even in the case of other agreements. The contractual partner does not have the right to withhold payments due to incomplete delivery, any guarantee or warranty claims or complaints.

An offset of any claims of the contractual partner against NOACK is excluded in any case if the counter claims have not been judicially established or expressly acknowledged by NOACK.

The contractual partner is only entitled to assertion of a right of retention in case of judicially established or expressly acknowledged counter claims against NOACK, that have a legal connection with claims by NOACK.

VII. RESERVATION OF TITLE

All of the goods for sale by NOACK are exclusively delivered under reservation of title and NOACK retains the sole ownership of the goods for sale until complete fulfillment of all of the contractual partner's obligations.

The contractual partner must comply with the necessary formal requirements for the preservation of the reservation of title, in particular to protect the goods on-hand from reduction of value and to insure them at its own costs against fire, burglary/theft and water damage.

The contractual partner shall handle the goods for sale with the care of a proper merchant and bear the entire risk for the reserved goods, in particular the risk of destruction, loss and reduction of value.

As long as the retention of title is in place, the contractual partner is allowed to dispose of the goods for sale in the course of normal business, with the buyer transferring all claims in the case of the sale of the reserved goods from a contract concluded by it with a third party for security of the claim of NOACK to NOACK. The buyer is entitled to collect these claims as long as it is not in default of payments to NOACK.

The buyer is obligated to file any necessary public documents even without the request by NOACK. The buyer shall submit information about its customers to NOACK and to inform these of the assignment. The assignment shall also be entered into the books of the business, in particular into the open items list and into the customer account as well as make it visible on delivery slips, invoices etc.. NOACK shall be given access to the company's books on request, as far as this is necessary for securing its claims, restricted to a limited overview of the books for security purposes.

In case of attachment or other garnishment by third parties, the contractual partner is obligated to assert the ownership right of NOACK in an appropriate manner and to inform NOACK in writing immediately.

Claims against NOACK cannot be transferred without expressed written consent (non-assignment clause).

VIII. WARRANTY, REPORT OF DEFECTS

The warranty period is 6 months unless individual special warranties apply to individual delivered objects, and starts at transfer.

A defect exists if the delivered good or the provided performance does not exhibit the typical or the expressly agreed characteristics. This defect must already exist at the time of transfer or provision of the performance. The reversal of the burden of proof in accordance with § 924 ABGB [Allgemein Bürgerliches Gesetzbuch = Austrian Civil Code] is excluded.

The contractual partner must immediately inspect the delivery and/or the performance for lack of defects after its provision in terms of §§ 377 et. seq. UGB [Unternehmensgesetzbuch = Austrian Commercial Code].

Discovered defects must be notified in writing to NOACK without delay, but at the latest within 2 working days after their discovery, with as detailed a description of the defects as possible and under submission of detailed and representative picture documentation.

Hidden defects must also be reported in writing without delay, but at the latest within 2 working days after their discovery, with as detailed a description of the defects as possible and under submission of detailed and representative picture documentation.

After processing, mixing or connection of the delivered goods with other goods or substances, any warranty inclusive of claims for any damages are expressly excluded.

In case of perishable goods, the buyer is obligated with any loss claim, in particular those arising due to warranty and claims for compensation to take suitable evidence-protecting measures under prior notification of the seller, with involvement of an official sampler or a sworn expert. If it fails to do this, only a retained sample of the seller shall apply as evidence and the basis for decision making.

If no notice of defect is raised or if it is not raised in a timely manner, the goods are deemed to be accepted. The claim for warranty or claims for compensation of damages and the right for rescission on account of defects is excluded in these cases.

Warranty claims of the contractual partner will be remedied by NOACK in all cases either by means of exchange, repair within a reasonable amount of time or price reduction at its option. The contractual partner can only demand cancellation (cancellation of the contract) if the defect is significant, cannot be remedied by means of exchange or repaired within a reasonable amount of time and if a price reduction is not acceptable to it.

The existence of a defect does not give the buyer the right to remedy the defect itself or to have it remedied by a third party; the seller must be given a prior chance to improve the situation within a reasonable amount of time.

Warranty claims of the contracting partner that have as its aim a remedy of the defect by means of improvement or exchange of the goods can only be claimed once NOACK is culpably in default with the fulfillment of warranty claims.

The obligation for warranty only applies to those defects that occur under compliance with the specified operational conditions and under normal use. It therefore does not cover defects that are caused by

- improper handling, application, storage or use by the contractual partner or its representatives in terms of contradiction to the instructions delivered together with the goods or to the specified authorization;
- improperly performed repairs or maintenance as well as unauthorized interventions or changes by the contractual partner or its representatives not expressly ordered or approved by NOACK;
- non-observance of the licensing regulations, the operating instructions, the provisions about handling of the goods for sale, the safety regulations and other instructions in regard to shipment, storage and proper use;
- chemical, electrochemical or electrical influences as well as insufficient supply of energy;

If the contractual partner is entirely or partially in default of performances to be provided by it, in particular payments that are entirely or partially in arrears, NOACK has the right to reject warranty claims.

In any case, the obligation for a warranty expires with termination of the warranty period; a particular regress of the contractual partner beyond that in accordance with § 933b ABGB due to self-fulfilled warranty obligations is expressly excluded.

IX. COMPENSATION FOR DAMAGES

NOACK points out that the delivered goods only offer the expected safety and functional quality in case of strict and complete compliance with the industry standards, licensing requirements, operating instructions, storage and transport conditions and other regulations, notices and instructions provided by the manufacturer.

NOACK is only liable for damages if these were caused by NOACK intentionally or in gross negligence. Liability for slight negligence is also excluded as are damages for consequential loss such as in particular loss of good will and/or business relationships, production problems, loss of data, financial losses and non-realized savings, loss of interest and damages due to claims of third parties. This also applies to liability for auxiliary persons in accordance with § 1313a ABGB. The liability therefore applies exclusively to limited damages of the delivery object itself, and therefore includes neither consequential damages nor the so-called Weiterfresserschäden [literal translation: next eater's damages, it refers to damages that were already in the product at the time of purchase, but get worse over time. Over and above this, all claims are limited to the respective purchase price.

Notwithstanding, the buyer has to test (if necessary by processing a sample or other suitable measures) whether the delivered goods are suitable for the intended purpose, in particular during mixing or processing with other components. If it fails to perform such a test, the seller has no liability whatsoever.

The agreed provisions about compensation for damages contained in these general terms and conditions or in other agreements in regard to compensation for damages also apply if the claim for compensation for damages is asserted in addition to or instead of a warranty claim.

Any claims for compensation for damages are to be made in court at the latest within 6 months of detection of the damage and the person sustaining the damage due to an otherwise exclusion.

X. CONCLUDING PROVISIONS

The jurisdiction and place of fulfillment for all present and future claims arising from the business relationship is agreed to be the competent commercial court of the 1st District in Vienna. NOACK does however have the right to select another court competent for the contractual partner.

Austrian law under exclusion of the juridical reference provisions and the UN Sales Convention shall be used exclusively for any present and future claims arising from the business relationship.

In the case of a violation of a provision against mandatory provisions, it is agreed that these provisions are only partially affected, which allows the rest of the provisions to remain unaffected. In this case, the two contractual partners agree to replace the ineffective provision with a valid provision that comes closest to the content of the economic purpose of the ineffective provision. If a part of the contract cannot refer to one of these provisions due to a compelling statutory regulation, it also applies to the other part.

Any possible non-German language version of these general business terms and conditions only exists for simplicity. The German version shall always prevail in case of disputes.

These general conditions are designed for legal transactions between companies. If these are also used as the basis for legal transactions between consumers in terms of § 1 paragraph 2 clause 2 of the Consumer Protection Act, they are only valid if they do not conflict with the 1st main part of this law.