

General Terms and Conditions of Sale and Delivery of  
NOELLE + VON CAMPE GMBH & CO. KG  
for entrepreneurial business transactions

**1. Scope**

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") apply to all business relationships between Noelle + von Campe GmbH & Co KG (hereinafter referred to as "Supplier") and its customers (hereinafter referred to as "Customer"), insofar as the Customer is an entrepreneur in the sense of section 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law. The object of the business relationship is the delivery of products (hereinafter referred to as "Products" or "Goods").
- 1.2 Unless otherwise agreed, the GTC in the version valid at the time of the order - at least in the last version communicated in text form - shall also apply as a framework agreement for similar future contracts, without the Supplier having to refer to them again in each individual case.
- 1.3 The GTC apply exclusively. Any deviating, conflicting or supplementary terms and conditions of the Customer shall only become part of the contract if and to the extent that the Supplier has expressly agreed in writing to the validity of such terms and conditions. This requirement of consent shall apply in any case, e.g. even if the Supplier carries out the delivery without reservation in the knowledge of the Customer's terms and conditions.
- 1.4 Individual agreements made with the Customer in individual cases, including collateral agreements, supplements and/or amendments, shall in any case take precedence over these General Terms and Conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation by the Supplier.
- 1.5 Legally relevant declarations and notifications of the Customer with regard to the contract (e.g. setting of deadlines, notification of defects) must be made in writing, i.e. in written or text form (e.g. letter, email, fax).

**2. Conclusion of contract**

- 2.1 Offers made by the Supplier are subject to confirmation and are non-binding. The order placed by the Customer shall be deemed a binding contractual offer. Unless otherwise stated in the order, the Supplier shall be entitled to accept it within two (2) weeks after its receipt by the Supplier.
- 2.2 The acceptance of the order requires the written (i.e. letter or email) confirmation of the Supplier. Upon acceptance, the contract between the Supplier and the Customer is concluded.
- 2.3 Insofar as the Customer refers in his order to documents (samples, proposals, drawings, calculations, etc.), technical data, colour shades, operational or inter-company standards (DIN standards, etc.) of the Supplier, these are only approximate and do not represent a warranted quality, unless the Supplier has expressly given a written assurance.

**3. Prices, terms of payment, default**

- 3.1 Unless otherwise agreed, the Supplier's prices valid at the time of conclusion of the contract shall apply. The prices are quoted net and in Euro plus the respective statutory value added tax and plus the costs for packaging, freight, postage, customs duties and insurance. These costs shall be shown separately on the invoice.
- 3.2 Unless otherwise agreed, the invoice amount shall be due and payable within ten (10) days of the invoice date and delivery of the Products without any deduction.
- 3.3 The Customer shall be in default upon expiry of the aforementioned payment period. Interest shall be charged on the invoice amount during the period of default at the applicable statutory default interest rate (currently nine (9) percentage points above the respective base interest rate of the European Central Bank). The Supplier reserves the right to assert further damage caused by default. The Supplier's claim to the commercial interest due in accordance with section 353 HGB (German Commercial Code) remains unaffected.
- 3.1 If the Customer is in default with a payment, the Supplier shall be entitled, following written notification to the Customer, to make the delivery owed in whole or in part only against advance payment. In the event of default in payment, the Supplier may also make the delivery dependent on the provision of a security. If the Customer refuses to pay in advance or provide security, the Supplier shall be entitled to withdraw from the contract and claim damages or reimbursement of expenses in accordance with Clause 3.5 of these General Terms and Conditions.
- 3.2 If it becomes apparent after conclusion of the contract (e.g. by filing for insolvency proceedings) that the Supplier's claim to the invoice amount is at risk due to the Customer's inability to pay, the Supplier shall be entitled under the statutory provisions to refuse performance and - if applicable after setting a deadline - to withdraw from the contract (section 321 BGB (German Civil Code)). Further legal rights to claim damages instead of performance or reimbursement of expenses remain unaffected.
- 3.3 Bills of exchange and cheques shall only be accepted with a corresponding separate agreement and only on account of performance and subject to their discountability. Discount charges will be charged from the due date of the invoice amount. A guarantee for the timely presentation of the bill of exchange and cheque and for the collection relating to a protest of the bill is excluded.
- 3.4 The Customer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed. In the event of delivery of defective Products, the Customer's counter rights, in particular in accordance with Clause 7 of these General Terms and Conditions, shall remain unaffected.

**4. Delivery, transport, insurance, transfer of risk**

- 4.1 Unless otherwise agreed, the Parties shall agree the delivery modalities individually.
- 4.2 Unless otherwise agreed, the choice of packaging, dispatch route and means of transport shall be left to the Supplier.

- 4.3 If the Customer is in default of acceptance, fails to cooperate or delays delivery for other reasons for which the Customer is responsible, the risk of accidental loss and accidental deterioration of the Products shall pass to the Customer. In addition, the Supplier shall be entitled to claim compensation for the resulting damage including additional expenses (e.g. storage costs). In such cases, the Supplier shall also be entitled to issue the invoice immediately and demand payment.
- 4.4 The conveying equipment (e.g. flat pallets) used by the Supplier for the delivery is the property of the Supplier. They shall be made available on loan and shall be surrendered/returned to the Supplier by the Customer within three (3) months after receipt at the Customer's own risk and expense. Losses and/or damage to conveying aids shall be borne by the Customer unless the Customer can prove that he is not responsible for this.
- 4.5 If the Supplier's Products are shipped with plastic sheets as intermediate layers, these shall remain the property of the pool keeper concerned. The plastic sheets shall only be made available to the Customer for temporary intended use and shall be surrendered/returned by the Customer to the Supplier at its own risk and expense as soon as the Customer no longer needs them. Losses and/or damage to the plastic sheets shall be borne by the Customer unless the Customer can prove that he is not responsible for this.

## **5. Delivery dates, delay in delivery**

- 5.1 Any delivery dates shall be agreed individually and shall only be binding if the Supplier confirms the respective delivery date in writing upon acceptance of the order.
- 5.2 If the Supplier is unable to meet binding delivery dates for reasons for which he is not responsible (non-availability of performance), the Supplier shall inform the Customer thereof without delay and at the same time inform the Customer of the expected new delivery date. If the performance is also not available by this new delivery date, the Supplier shall be entitled to withdraw from the contract in whole or in part; the Supplier shall immediately reimburse any consideration already rendered by the Customer.
- 5.3 The occurrence of the Supplier's default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder with a reasonable grace period by the Customer is required.
- 5.4 The rights of the Customer pursuant to Clause 7 of these General Terms and Conditions and the statutory rights of the Supplier, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.
- 5.5 Partial deliveries shall be permissible insofar as this is reasonable for the Customer.

## **6. Retention of title**

- 6.1 The Goods sold shall remain the property of the Supplier (hereinafter referred to as "Reserved Goods") until all present and future claims and demands (including any balance claims from current accounts) of the Supplier against the Customer arising from the contract and an ongoing business relationship have been met in full. This shall apply insofar as this is permissible under the law of the country in whose territory the Reserved Goods are contractually located. If this right does not

permit the retention of title, but permits the retention of similar rights, the Supplier shall be entitled to assert these rights. The Customer undertakes to support all measures to protect the property or security interests of the sold Goods.

- 6.2 The Customer is obliged to store the Reserved Goods carefully and to insure them at his own expense against loss and damage. He hereby assigns his claims from the insurance contracts in advance to the Supplier. The Supplier accepts this assignment. The Customer is obliged to store and label the Reserved Goods separately.
- 6.3 The Reserved Goods may neither be pledged to third parties nor transferred as security before full payment of the secured claims has been made. If and to the extent that third parties gain access to the Reserved Goods or to the claims assigned in advance, the Customer shall inform the Supplier immediately. In this case, the Supplier is entitled to take possession of the Reserved Goods immediately without withdrawing from the contract due to the retention of title, to enter the Customer's premises for this purpose and to demand appropriate information about the Reserved Goods. The costs of any interventions shall be borne by the Customer.
- 6.4 A resale / further processing of the Reserved Goods by the Customer is only permissible in the ordinary course of business. This authorisation to resell shall be excluded if the internal relationship between the Customer and his customers is subject to a prohibition of assignment with regard to the Customer's claims. In the event of resale / further processing, the following shall also apply:
- (a) The retention of title extends to the full value of the Products resulting from the processing, mixing, combining or transformation of the Reserved Goods, whereby the Supplier is deemed to be the manufacturer. If the Customer combines, mixes or processes the Reserved Goods with other Goods of third parties or transforms them with other Goods of third parties and if the ownership right of the third party remains in force, the Supplier shall be entitled to co-ownership of the resulting Product in proportion to the invoice values of the processed, mixed, combined or transfigured Goods. In this respect, the Product shall be deemed to be Reserved Goods within the meaning of these terms and conditions.
  - (b) The Customer hereby assigns to the Supplier as security in advance all claims against third parties arising for the Customer from the resale of the Reserved Goods in the amount of the Supplier's claims. In the event of co-ownership in accordance with the above paragraph, the assignment shall only include the Supplier's share of the claim corresponding to the co-ownership. The Supplier hereby accepts the assignment. The obligations stated under Clause 6.3 of these General Terms and Conditions shall also apply with regard to the assigned claims.
  - (c) The Customer shall remain authorised to collect the claims in addition to the Supplier. The Supplier undertakes not to collect the claim as long as the Customer meets his payment obligations towards the Supplier, is not in default of payment, no petition for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If one of the aforementioned events occurs, the Customer's authorisation to collect shall expire even without express revocation. The Supplier may then demand that the Customer disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the third party of the assignment. In this case, the Supplier shall also be entitled to revoke the Customer's authority to resell / further process the Goods.

- 6.5 In the event of breach of contract by the Customer, in particular non-payment of a due claim, the Supplier shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of retention of title. The demand for surrender does not automatically include the declaration of withdrawal; the Supplier is rather entitled only to demand surrender of the Goods and to reserve the right to withdraw from the contract. In the event of non-payment by the Customer, the Supplier may only assert these rights if he has previously unsuccessfully set the Customer a reasonable deadline for payment or if such setting of a deadline is dispensable under the statutory provisions.
- 6.6 If the realisable value of the securities given to the Supplier exceeds the Supplier's claims by more than 10 % in total, the Supplier shall, at the written request of the Customer, release the excess securities at its discretion.

## **7. Defect rights**

- 7.1 The statutory provisions shall apply to the Customer's rights in the event of material defects and defects of title, unless otherwise specified below.
- 7.2 The Supplier assumes no liability for the suitability of the delivered Goods for any special purposes envisaged by the Customer, unless these special purposes have been expressly agreed in writing. If the Supplier has to deliver according to drawings, specifications, samples, etc. of the Customer, the latter shall assume the risk of suitability for the intended purpose.
- 7.3 The Customer's claims based on defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (sections 377, 381 HGB (German Commercial Code)). Accordingly, the Customer shall carefully inspect the delivered Goods upon receipt. If a defect is found in the delivered goods, the Customer must notify the Supplier of this defect in writing immediately, at the latest within five (5) working days of receipt of the Goods. Hidden defects which cannot be discovered within this period even after careful inspection must be reported in writing immediately after discovery, at the latest within three (3) working days after discovery. The punctual dispatch of the notice of defects is sufficient to meet the deadline. If the Customer fails to report a defect or if the defect is reported late / or otherwise not properly reported the Goods are deemed approved and the liability of the Supplier for the defect not reported or reported late / otherwise not properly reported is excluded. The same applies to quantity deviations.
- 7.4 If the delivered Goods are defective, the Supplier shall, at his discretion, either repair the defective Goods or supply a replacement. The Supplier's right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 7.5 The Supplier shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, if a defect actually exists. If, however, a request by the Customer to remedy a defect turns out to be unjustified, the Supplier shall be entitled to demand reimbursement of the resulting costs from the Customer, unless the Customer could not recognise the lack of defectiveness.
- 7.6 If the supplementary performance has failed or a reasonable period to be set by the Customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer may withdraw from the contract or reduce the purchase price.

Claims of the Customer for damages and/or reimbursement of futile expenses exist only in accordance with Clause 8 of these General Terms and Conditions and are otherwise excluded.

## **8. Liability**

- 8.1 Unless otherwise stated in these GTC including the following provisions, the Supplier shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 8.2 The Supplier shall be liable for damages - irrespective of the legal basis - in the event of intent and gross negligence. In the event of simple negligence, the Supplier shall only be liable
- (a) for damages resulting from injury to life, limb or health,
  - (b) for damages arising from the breach of such contractual obligations, the observance of which is essential for the proper performance of the contract and on the observance of which the Customer regularly relies or may rely (essential contractual obligations, e.g. faultless delivery of the Goods). In this case, however, the Supplier shall only be liable for the typically occurring and foreseeable damage.
- 8.3 The limitations of liability contained in this provision shall also apply to breaches of duty by representatives, employees and vicarious agents of the Supplier as well as to other persons whose fault the Supplier is responsible for in accordance with statutory provisions.
- 8.4 The limitations of liability resulting from this provision shall not apply if the Supplier fraudulently concealed a defect or assumed a guarantee for the quality of the Goods. The limitations of liability shall also not apply to claims of the Customer under the Product Liability Act and other mandatory provisions.

## **9. Limitation**

- 9.1 Notwithstanding section 438 Para. 1 No. 3 BGB (German Civil Code), claims for material defects and defects of title shall become statute-barred within one (1) year of delivery of the Goods. Special statutory regulations regarding the limitation period shall remain unaffected, in particular for claims in rem for surrender by third parties (section 438 para. 1 no. 1 BGB (German Civil Code)), in the event of fraudulent intent on the part of the Supplier (section 438 para. 3 BGB (German Civil Code)), for claims in recourse against the Supplier in the event of final delivery to a consumer (section 479 BGB (German Civil Code)).
- 9.2 The aforementioned limitation periods of sales law also apply to contractual and non-contractual claims for damages of the Customer based on a defect of the Goods, unless the application of the regular statutory limitation period (sections 195, 199 BGB (German Civil Code)) would lead to a shorter limitation period in individual cases. The Customer's claims for damages pursuant to Section 8.2 sentence 1, sentence 2 (a) of these General Terms and Conditions (i.e. intent and gross negligence as well as injury to life, body or health), claims due to non-compliance with any guarantee of quality, claims due to fraudulent intent on the part of the Seller as well as claims pursuant to the Product Liability Act shall, however, become statute-barred exclusively in accordance with the statutory limitation periods.

**10. Instruction, product liability**

The Customer is obliged to carefully observe any product information issued by the Supplier and to pass it on to his customers. The Customer undertakes to ensure that his customers instruct their end customers accordingly. He shall prove this to the Supplier upon request.

**11. Confidentiality**

11.1 The Customer is obliged to treat all business and company secrets, documents (including samples, models and data), knowledge and other information of the Supplier which he receives directly or indirectly from or in connection with the business relationship with the Supplier (hereinafter referred to as "Confidential Information") as strictly confidential, to use them only for the jointly pursued purposes of the performance of the contract and not to pass them on to third parties. The Customer shall also oblige his personnel and other third parties commissioned by him to maintain the same confidentiality, insofar as they become aware of the confidential information. The Customer must restrict access to such confidential information to the extent necessary for the personnel and other third parties commissioned by the Customer to perform the contract.

11.2 Unless otherwise agreed, this obligation to maintain secrecy shall end twelve (12) months after the end of the business relationship.

11.3 The confidentiality obligation shall not apply if and to the extent that confidential information is or becomes generally known or accessible. It shall also not apply if the confidential information was already known to the Customer upon receipt, without the Customer having violated the contract, or if the confidential information is transmitted after receipt by a third party entitled to pass it on.

11.4 The obligation to maintain secrecy shall also not apply if the Customer is obliged to disclose information on the basis of statutory provisions or on the basis of a court order, an authority or other institution. Such disclosure shall not constitute a breach of any provision of the contract. The Customer bears the burden of proof that such an exemption from the obligation of secrecy exists.

**12. Place of jurisdiction, applicable law**

12.1 If the Customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship shall be the court competent for the Supplier's place of business in Boffzen. The Supplier shall also be entitled to file a suit at the Customer's place of business.

12.2 The GTC and the contractual relationship between the Supplier and the Customer shall be governed exclusively by the law of the Federal Republic of Germany. The application of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG - "Vienna Sales Convention") is excluded.

As at: November 2019

NOELLE + VON CAMPE GMBH & CO. KG  
SOLLINGSTRASSE 14 / 37691 BOFFZEN  
T. +49 5271 408 -0 / F. +49 5271 408 -99  
E. INFO@NUVC.DE / WWW.NUVC.DE