



General Terms of Sale and Delivery of Novoplast Verpackungen GmbH & Co. KG

The following General Terms and Conditions of Sale and Delivery (GTC) apply to all orders and deliveries to companies, legal entities under public law or special funds under public law.

§ 1 Application area

1. Orders only become binding with our order confirmation. If the customer does not object to the contents of the order confirmation within 7 days of receipt, the contract shall be concluded under the conditions stated therein, even if these deviate from the original agreements due to transmission, communication or spelling errors.
2. Amendments and supplements should be made in text form. All our offers are subject to change without notice unless they are designated as firm offers. Quantities or sizes are non-binding approximate values, unless expressly agreed upon as binding.
3. In the case of permanent business relations, these GTC shall also apply to future transactions, even if no express reference is made to them, provided they were referred to in an order previously confirmed or executed by us.
4. Terms and conditions of business of the customer do not apply, even if we do not expressly object to them. This is not applicable, if they have been expressly accepted by us in writing. The regulations on distance selling deals with consumers shall not apply to the business relationship with entrepreneurs, not even correspondingly.
5. Should individual provisions of these GTC be or become invalid, the remaining provisions shall not be affected.

§ 2 Prices

1. In case of doubt, prices are EXW (Incoterms 2020) excluding freight, customs, import or export duties and packaging plus VAT at the statutory rate.
2. If the relevant cost factors, in particular for material, energy or personnel, change by more than 5% between the submission of our offer or confirmation of order and delivery, each party is entitled to demand a price adjustment. This must be calculated according to how the decisive cost factor changes the total price.
3. We are not bound to previous prices for new orders.

§ 3 Obligation to deliver and accept, force majeure

1. Delivery periods shall commence upon receipt of all documents required by us for the execution of the order, the down payment and the timely provision of materials, insofar as this was agreed for the order. Upon notification of readiness for dispatch, the delivery period shall be deemed to have been met if dispatch is delayed or impossible through no fault of our own.
2. If an agreed delivery deadline is not met due to our fault, the customer is in any case obliged to set a reasonable extension.
3. In the case of call-off orders without agreement on the term, production batch sizes and acceptance dates, we can demand a binding specification three months after order confirmation of the order at the latest. If the customer does not comply with this request within three weeks, we are entitled to set a two-week grace period and, after its expiration, to withdraw from the contract and/or claim damages in lieu of performance. Alternatively, we are entitled to produce the agreed quantity of goods and to offer or deliver the goods to the customer.
4. Events of force majeure entitle us to postpone the delivery by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part with regard to the part not yet fulfilled. In such a case, there shall be no claims for damages possible. Strike, lockout or unforeseeable, unavoidable circumstances, e.g. operational breakdowns or transport delays or interruptions through no fault of our own, lack of raw materials or energy through no fault of our own, which make it impossible for us to deliver on time despite reasonable efforts, shall be deemed equivalent to force majeure. This shall also apply if the aforementioned hindrances occur during a delay or at a subcontractor.
5. The customer may request us to declare within two weeks whether we wish to withdraw from the contract or to deliver within a reasonable period of grace. If we do not make a declaration, the customer may withdraw from the unfulfilled part of the contract.
6. We shall inform the customer immediately if a case of force majeure as described in § 3 No. 1 occurs. We will try to keep the customer's impairments as low as possible, if necessary also by handing over the moulds for the duration of the impediment.

§ 4 Terms of payment

1. All payments are to be made in € (EURO) exclusively to us. Unless otherwise agreed, the purchase price for deliveries or other services is payable without deduction within 14 days of the invoice date.
2. If the agreed payment date is exceeded, interest will be charged at the statutory rate of 9 percentage points p.a. above the respective base rate in accordance with § 247 BGB.
3. Cheques or bills of exchange are not accepted by us.
4. Sustained non-compliance with terms of payment or circumstances which give rise to serious doubts about the creditworthiness of the customer entitle us to demand immediate payment of all outstanding debts. In addition, we are entitled in this case to demand advance payment for outstanding deliveries and to withdraw from the contract after the unsuccessful expiry of a reasonable period.

§ 5 Packaging, dispatch, transfer of risk and default of acceptance

1. Unless otherwise agreed, we select packaging, mode of dispatch and dispatch route at our reasonable discretion. We shall be entitled to commission one of the senders usually selected for our business at the usual conditions agreed with this sender.
2. Even in the case of carriage paid delivery, the risk is transferred to the customer when the goods leave the supplying factory. In the event of delays in dispatch for which the customer is responsible, the risk shall pass to the customer upon notification of readiness for dispatch.
3. At the written request of the customer, the goods will be insured by us at his expense against risks to be specified by him.
4. in case of default of acceptance by the customer, we are entitled to store the goods at the customer's expense. Costs of EUR 6.50 per pallet per month or part thereof shall be incurred. We reserve the right to assert higher storage costs against proof.

§ 6 Retention of title

1. The deliveries remain our property until all claims we are entitled to against the customer have been settled, even if the purchase price for specially designated claims is paid by the customer. In the case of a current account, the reserved ownership of the deliveries (reserved goods) shall be deemed security for our balance invoice. If liability by bill of exchange is established in connection with the payment of the purchase price, the reservation of title shall not expire before the bill of exchange is honoured by the customer as drawee.
2. Any treatment or processing by the customer shall be deemed to have been carried out on our behalf to the exclusion of the acquisition of ownership in accordance with § 950 BGB (German Civil Code); we shall become co-owners of the item thus created in proportion to the net invoice value of our goods to the net sales price of the goods to be treated or processed, which shall serve as reserved goods to secure our claims in accordance with No. 1.
3. In the event of processing (connection/mixing) with other goods by the customer, the provisions of §§ 947, 948 BGB (German Civil Code) shall apply with the consequence that our co-ownership share in the new item shall now be deemed to be reserved goods within the meaning of these terms and conditions.
4. The customer is only permitted to resell the reserved goods in the normal course of business and on condition that he also agrees a reservation of title with his customers in accordance with No. 1 to 3. The customer is not entitled to dispose of the reserved goods in any other way, in particular pledging and transfer of ownership by way of security.
5. In the event of resale, the customer hereby assigns to us, with all ancillary rights, all claims arising from the resale and other justified claims against his customers until all our claims have been satisfied. At our request, the customer is obliged to provide us immediately with all information and documents necessary to assert our rights against the customer's customers.
6. If the goods subject to retention of title are resold by the customer after processing in accordance with No. 2 and/or 3 together with other goods not belonging to us, the assignment of the purchase price claim in accordance with No. 5 shall only apply to the amount of the invoice value of our goods subject to retention of title.

7. If the realisable value of our securities exceeds the total claims against the customer by more than 10%, we are obliged to release securities of our choice at the customer's request.
8. We must be notified immediately of any seizure or confiscation of the reserved goods by third parties. Any intervention costs arising from this shall in any case be borne by the customer, unless they are borne by third parties.
9. If we make use of our retention of title in accordance with the above provisions by taking back goods subject to retention of title, we shall be entitled to sell the goods by private contract or have them auctioned. The goods subject to retention of title shall be taken back at the proceeds obtained, but at most at the agreed delivery prices. We reserve the right to further claims for damages, in particular loss of profit.
10. Goods abroad
If the goods delivered by us are located abroad and were delivered before payment of all amounts owed under the contract, they shall remain our property until full payment has been made, insofar as this is permitted under the law in whose jurisdiction the goods are located. If this law does not permit the retention of title, but allows us to reserve other rights to the delivered goods, we may exercise all rights of this kind, e.g. a lien. The customer is obliged to support us immediately upon request in the assertion of rights of the kind mentioned above in this clause. He must also cooperate in this if registrations or other measures are required for the validity of the reservation of title.

§ 7 Liability for material defects

1. Decisive for the quality and design of the products are the product description or, if their preparation has been agreed, the reference samples, which will be presented to the customer for inspection by us on request. In all other respects, § 8 No. 1 must also be observed. The reference to technical standards serves the purpose of the performance description and is not to be interpreted as a guarantee of quality. The tolerances customary in the industry shall apply. Unless otherwise agreed in writing, production shall be carried out using materials customary in the industry and in accordance with the agreed production processes, or, in the absence of an agreement, in accordance with known production processes.

Minor deviations from the original in the case of colour productions or reproductions shall not be deemed a defect; the same shall apply to production-related, customary deviations between press proofs and production run.

2. If concrete specifications for the production of labels or as far as provisions are made, in particular of in-mould labels (hereinafter: label), but also of any other kind, the customer alone is responsible for the correctness and suitability of the printing data, label and materials selected by him. This also applies if the print order is placed or carried out by us after the customer has given his approval for the data and formats. Any damage or loss of production shall be borne by the customer. This applies in particular also in the event that, due to the size, shape or the desired or supplied material of the label, the products manufactured using the label do not have the quality or property suitable for the intended purpose. However, we shall inform the customer immediately, at the latest within 5 working days of becoming aware of any problems we may have identified before or during production.

3. Even if we advise the customer outside of his contractual performance, we shall only be liable for the functionality and suitability of the goods for the intended purpose if we have given express prior assurance.
4. Notices of defects must be made in writing without delay. In the case of hidden defects, the complaint must be made immediately after discovery. In both cases, unless otherwise agreed, all claims for defects shall expire twelve months after the transfer of risk.
5. In the event of a justified notice of defect, we are obliged to provide subsequent performance (either repair or replacement, at our discretion). If we do not comply with this obligation within a reasonable period of time or if the subsequent performance fails repeatedly, the customer is entitled to reduce the purchase price or to withdraw from the contract. For further claims, in particular claims for reimbursement of expenses or compensation for damages due to defects or consequential damages, the limitations of liability pursuant to § 8 shall apply. Replaced parts shall be returned to us at our request, carriage forward.
6. Unauthorised reworking and improper handling will result in the loss of all claims for defects. Only in order to avert disproportionately large damages or in the event of a delay in rectification of defects by us is the customer entitled, after prior consultation with us, to rectify the defects himself and demand reimbursement of reasonable costs.
7. Wear and tear or ageing to the usual extent does not give rise to any warranty claims.
8. Recourse claims in accordance with §§ 445a, 478, 479 BGB (German Civil Code) shall only be applicable if the recourse of the consumer was justified and only to the extent permitted by law, but not for goodwill arrangements not previously agreed with us and shall require the customer to observe its own obligations, in particular the obligation to give notice of defects.

§ 8 General limitations of liability

1. We shall only be liable for damages or reimbursement of expenses if we, our executives or vicarious agents are guilty of intent, gross negligence or injury to life, body or health.
2. Strict liability under the Product Liability Act and liability for the fulfilment of a guarantee of quality remain unaffected.
3. Liability for the culpable breach of material contractual obligations shall also remain unaffected; however, except in the cases of No. 1, liability shall be limited to foreseeable, typical contractual damage. Material contractual obligations are understood to be the fundamental, elementary obligations arising from the contractual relationship which are of particular importance for the proper execution or fulfilment of the contract or which have a very significant influence on the relationship of trust existing between the parties, in particular the fulfilment of delivery obligations and important information obligations.
4. A change in the burden of proof to the disadvantage of the customer is not associated with the above provisions.

§ 9 Moulds (tools)

1. The price for moulds also includes the costs for the one-time sampling, but not the costs for testing and processing devices as well as for changes initiated by the customer. Costs for further sampling for which we are responsible shall be borne by us.
2. Unless otherwise agreed, we are and remain the owner of the moulds produced for the customer by us or a third party commissioned by us. If expressly agreed, moulds will only be used for customer orders as long as the customer meets his payment and acceptance obligations. We are only obliged to replace these moulds free of charge if they are required to fulfil an output quantity assured to the customer. Our obligation of strage of the mould expires two years after the last delivery of parts from the mould. The customer shall be informed before any removal. If he then declares that he wishes to take over the mould, he must bear the costs of transport; if the mould has not yet been amortised (see also No. 3), he must also pay the appropriate residual value for amortisation before collection.
3. If a contract is terminated but the moulds have not yet been amortised, we are entitled to invoice the remaining amortisation amount in full without delay.
4. If it is agreed that the customer is to become the owner of the moulds, ownership shall pass to him after full payment of the purchase price for the moulds. The handing over of the moulds to the customer is replaced by the storage in favour of the customer. Irrespective of the customer's legal claim for return and of the service life of the moulds, we shall be entitled to exclusive possession of the moulds until the end of the contract. We shall mark the moulds as third-party property on request and insure them at the customer's request and expense.
5. In the case of the customer's own moulds in accordance with No. 4 and/or moulds made available on loan by the customer, our liability with regard to storage and care is limited to the same care as in our own affairs. Costs for maintenance and insurance are borne by the customer. Our obligations expire if, after completion of the order and corresponding request, the customer does not collect the moulds within a reasonable period of time. As long as the customer has not fulfilled his contractual obligations in full, we are entitled to a right of retention of the moulds in any case.
6. Unless expressly agreed otherwise, we may also use the tools or moulds for other productions. Exclusivity requires a separate agreement.

§ 10 Drafts/clichés/documents

1. We retain the sole right of execution and copyright to our drafts, documents, illustrations, drawings and other documents. If the customer provides templates and ideas, we shall be granted a joint copyright to the extent that the template or draft was designed or edited by us.
2. If no order is placed, the customer is obliged to return to us immediately all documents handed over to him, including any copies made. Digital copies are to be permanently destroyed.
3. When making templates and ideas available, the customer shall indemnify us against any claims by third parties who assert rights to them.
4. The drafts, final artwork, clichés and the like produced by us shall remain our property, even if the customer has been charged the production costs.

5. The customer only acquires rights of use for our designs if a separate payment is made for them. In case of doubt, only a simple right of use is then granted, unless expressly agreed otherwise.
6. Exclusivity on the designs requires a separate agreement.

§ 11 Provision of material

1. If material is supplied by the customer, it has to be delivered in good time and in perfect condition at his expense and risk with an appropriate quantity surcharge of at least 5%.
2. The customer alone is liable for the faultlessness and suitability of all material provided; § 7 No. 2 is expressly referred to.
3. In the event of late delivery or a violation of No. 1, the delivery time shall be extended accordingly. Except in cases of force majeure, the customer shall also bear the additional costs incurred for interruptions in production.

§ 12 Industrial property rights and defects of title

1. If we have to deliver according to drawings, models, samples or using parts provided by the customer, the customer is responsible for ensuring that the property rights of third parties in the country of destination of the goods are not infringed by this. We shall inform the customer of rights known to us, but are not obliged to conduct our own research. The customer shall indemnify us from third party claims on first demand and shall compensate us for any damage incurred. If a third party prohibits us from manufacturing or supplying goods by invoking a property right belonging to him, we are entitled to suspend work even without examining the legal situation until the legal situation has been clarified by the customer and the third party. If, due to the delay, the continuation of the order is no longer reasonable for us, we are entitled to withdraw from the contract.
2. Drawings and samples provided to us, which have not led to an order, will be returned on request; otherwise we are entitled to destroy them three months after submission of the offer. This obligation applies to the customer accordingly. The party entitled to destroy them must inform the contractual partner of his intention to destroy them in good time in advance.
3. We are the owner of all the property rights, copyrights and, if applicable, industrial property rights, in particular all rights of use and exploitation of the models, moulds and devices, drafts and drawings which are designed by us or by third parties on our behalf. Upon request, the customer shall return to us without delay all documents, records, moulds, samples or models, including any copies made.
4. If there are other defects of title, § 7 shall apply accordingly.

§ 13 Food safety and recycled materials

1. If a product is to be used for contact with food, the suitability of the material for the specific foodstuff must be checked in advance by the customer on his own responsibility.
2. Recycling raw materials are carefully selected by us. Regenerated plastics may nevertheless be subject to major fluctuations in surface quality, colour, purity, odour and physical or chemical properties from batch to batch; this does not entitle the customer to make complaints. However, upon request, we will assign any claims against suppliers to the customer without any guarantee for their existence.

§ 14 Place of performance and jurisdiction

1. The place of performance is the location of the supplying factory.
2. For all disputes arising from the contract or with regard to the execution of the contract, the Regional Court (Landgericht) Munich I shall have exclusive jurisdiction.
3. German law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods.