

## General Terms of Sale for Trade and Industry

### I. Offer and Conclusion of a Contract

- (1) The General Terms of Sale of NOLDEN CARS & CONCEPTS GmbH, Robert-Perthel-Straße 27, 50739 Köln, apply exclusively to all offer and contracts. Any conditions to the contrary do not apply unless they are stipulated in the specific order as whole. In all cases we object to the inclusion of any conditions to the contrary in advance. This also applies in the event that we conclude the contract or render the contractually owed performance and, in particular, accept payments on the purchase price in the knowledge that the terms and conditions of the Customer conflict with or differ from our General Terms of Sale.
- (2) Verbal agreements, of whatever kind, are only binding if we have confirmed them in writing; this also applies to additions, amendments or collateral agreements of any kind.
- (3) The documents belonging to the offer and contract, such as diagrams, drawings, weight and measurement data, performance and consumption data, only apply approximately unless they are expressly referred to as binding. We reserve all rights to quotations, drawings and other documents. They may not be made accessible to third parties.
- (4) Our written order confirmation applies for the scope of the contractually agreed delivery/performance.
- (5) We reserve the right to make technical changes and improvements to the contractually owed delivery/performance provided we can prove that this is reasonable for the Customer.

### II. Prices / Extra Charge for Small Quantities

- (1) All the prices quoted in our sales documents, price lists, offers, order confirmations and invoices are net without discount or any other deductions ex warehouse and in euro. Any packaging/shipping costs incurred as well as statutory value added tax are listed separately.
- (2) The prices specified are based on the purchase prices, raw material and energy prices, wages/social security contributions, freight rates and public charges valid at the time of the offer being submitted which affect the costs of the goods directly or indirectly. In the event of a change in these parameters, we reserve the right to make an appropriate price adjustment if more than four months lie between the conclusion of the contract and the date of delivery agreed upon, unless section 310 of the German Civil Code (BGB) applies to the Customer.
- (3) We have no minimum order value for orders in general. However, we charge an extra charge of 25,00€ for orders whose gross value is under 200,00€.

### III. Delivery - Default

- (1) The period for delivery shall commence on the date of the order confirmation, but not before the delivery of any documents, permits or approvals to be obtained by the Customer or receipt of an agreed down payment.
- (2) The delivery period is observed if the delivery article has left the supplier's works or the storage site or readiness for dispatch has been communicated to the Customer before its expiry, unless something else has been agreed in writing.
- (3) The term for delivery shall be extended by a reasonable period in the case of measures as part of industrial action and where unforeseen hindrances occur which are outside our control or in the case of hindrances for which a supplier is responsible.
- (4) If we fall behind with delivery, we are obliged to pay the Customer delay compensation of 0.5% of the value of the delayed delivery article per full week of delay, but no more than 5%. If the Customer sets us a reasonable period of grace in writing with the threat of refusal after we have already defaulted on delivery, and we allow this grace period to expire for reasons for which we are not responsible, the Customer may withdraw from the contract. The Customer is only entitled to assert claims for damages if the delivery default is based on intent or gross negligence, including intent or gross negligence on the part of our vicarious agents.
- (5) If delivery is delayed due to circumstances for which the Customer is responsible, he will be charged, starting 14 days from the date of notification of delivery readiness, the storage costs originating with third parties and, in the event of storage by the contractor, 0.5% of the sale price of the contractual article per month. In addition, we are entitled, after granting a grace period that has expired unsuccessfully, to otherwise dispose of the contractual item and supply the Customer after setting an appropriate extension of the delivery period.
- (6) Compliance with the delivery date is conditional upon the fulfilment of the Customer's contractual obligations.
- (7) Should the Customer fail to accept the contractual item after notification of readiness to deliver or fail to fulfil his payment obligation for longer than six weeks, we are entitled, after granting a grace period of 14 days, to withdraw from the contract or demand compensation due to non-performance. If we demand compensation due to non-performance, we may demand as damages 15% of the sale price of the contractual item. The damages shall be set higher or lower if we can prove that the loss suffered was greater or the customer that it was less. If we do not make use of this right, we have the power, irrespective of our other rights, to freely dispose of the contractual item and supply in its place an equivalent item under the terms of the contract.

#### IV. Passage of Risk - Acceptance

- (1) Delivery shall be carried out at the risk and expense of the Customer unless otherwise agreed in writing. The risk of accidental loss or deterioration shall pass to the consumer upon delivery ex works or ex warehouse unless otherwise agreed in writing.
- (2) If delivery is delayed at the Customer's request or if the contractual item is not accepted or not accepted in the ordered quantity for reasons for which we are not to blame, the risk shall pass to the Customer upon notification of readiness for delivery. The costs resulting from storage, at least 0.5% of the value of the contractual item per month, shall be borne by the Customer.
- (3) Unloading of the delivered contractual item is the Customer's responsibility and is carried out at his expense.
  - V. Payment (1) Unless otherwise specified in the order acknowledgement, the purchase price is due for payment net, without discount, within thirty days from the invoice date and after receipt of the contractual item.
- (2) Cheques/bills of exchange are only accepted on account of payment and subject to their being finally credited. Renegotiation and prolongation are not deemed performance. Collection and discount charges as well as any other fees shall be paid by the Customer.
- (3) The Customer is not entitled to offset against counterclaims unless his counterclaims have been finally established in law, are undisputed or have been recognised by us in writing.
- (4) The Customer shall only be entitled to rights of retention insofar as his counterclaim is based on one and the same contractual relationship.
- (5) If the Customer defaults on his payments, we are entitled to charge interest on arrears of 5% above the respective base rate of the Deutsche Bundesbank. This does not apply if we can prove that we incurred a greater loss due to the payment default; this does not apply if the Customer can prove that no loss whatsoever or a substantially lower loss was incurred due to the default. In addition, we are entitled to a lump sum of 40,00 € in accordance with section 288 (5) sentence 1 BGB.

#### VI. Claims in Respect of Defects

- (1) The Customer's warranty claims are subject to him having duly complied with his duties to examine and object to defects in accordance with sections 377 and 378 of the German Commercial Code (HGB). After receipt of the consignment at the agreed location or at our premises, the Customer shall especially examine the goods supplied with regard to quantity, dimensions, form, quality and intactness, etc. If defects are detected, they shall be listed in writing with respect to each individual product that is the subject of complaint and disclosed to us in writing without delay together with a concrete description of the defects, stating the serial number of the product in question, at the latest within eight days after receipt of the goods. Defects which cannot be detected, even after careful inspection, must be notified in writing immediately after they have been detected. Sentence three applies accordingly. The contractual condition of the goods shall be determined by the time when they left our warehouse. Subject to the foregoing, we shall provide a warranty for material defects and defects of title to the exclusion of any other claims, subject to the liability provisions under clause VII Warranty, as follows:
  - (2) With all parts which prove to be defective as a result of a circumstance that existed prior to the passage of risk, we are obliged at our discretion to repair them or replace them with flawless parts. The ascertainment of such defects must be reported to us in writing without delay. Replaced parts shall become our property.
  - (3) Warranty obligations are excluded for improper assembly, commissioning or use by the Customer and/or one of his agents, non-compliance with the regulations on handling, maintenance and care, improper modification or repair work, installation in unsuitable premises, effects of parts of third-party origin and other external influences.

Natural wear and tear is excluded from the liability for defects. We do not assume a warranty obligation for damage occurring after the passage of risk, especially if it is attributable to deficient and negligent handling during transport, storage, assembly, operation or the like and/or natural wear and tear.
  - (4) The Customer shall send the goods to us at his expense for the purpose of examining the goods which are subject to a complaint. The Customer shall, by arrangement, give us the requisite time and opportunity to carry out all the repairs and replacement deliveries that appear necessary to us, otherwise we shall be released from liability for the resultant consequences. Only in urgent cases involving a risk to the safety of operations or in order to avert disproportionately high loss or damage the Customer shall be entitled to remedy the defect itself or have it remedied by third parties and to demand that we reimburse him for the expenditure required.

(5) Should the Customer's complaint turn out to be justified, we shall bear the shipping costs paid by the Customer for sending the defective goods to us. We shall also bear the costs of repairs and/or replacement deliveries. The assumption of any costs incurred to the Customer for removal and installation is excluded. Processing of the Customer's complaint in accordance with sentence 1 is subject to the Customer in respect of each individual defective item sending us a concrete description of the fault as well as an invoice for any consequential charges which do not relate to the removal and installation costs to be borne by the Customer himself at the latest within two months from the day of discovery of the defect, whereby the serial numbers of the goods which are the subject of complaint must be noted on all the aforementioned invoices. The two-month time limit is calculated in accordance with sections 187 (1) and 188 (2) of the German Civil Code (BGB). If the Customer fails to fulfil the aforementioned duty to provide proof and documentation which is incumbent upon him, does not do so in full or does not do so within the two-month time limit, we are entitled to definitively refuse to process the complaint and any consequential charges which do not relate to the removal and installation costs.

(6) Should the Customer's complaint turn out to be unjustified, he is obliged to pay us the costs of forwarding the allegedly defective goods to us as well as the shipping costs which we incurred to send the allegedly defective goods back to the Customer. The Customer is also obliged to pay us lump-sum compensation of € 40.00 including VAT per item allegedly objected to. The Customer retains the right to prove that we incurred no loss or substantially less loss than the lump-sum compensation in accordance with sentence 2. We expressly reserve the right to claim further damages.

(7) According to the statutory provisions, the Customer is entitled to withdraw from the contract if he has set us a reasonable time limit in writing for the repair or replacement delivery on account of a material defect and we have allowed it to expire fruitlessly. In the case of negligible defects the Customer is only entitled to a price reduction. Otherwise the right to a reduction is excluded.

(8) If the Customer or one of his agents improperly repairs the item himself, we do not accept any liability for the resultant damage.

(9) If copyrights or industrial property rights in the Federal Republic of Germany are infringed through use of the delivery item, the Customer shall be given the right of further use or the delivery item will be modified in a manner which is acceptable to the Customer so that the industrial property right infringement no longer exists. Should this not be possible for economic reasons or within a reasonable period of time, we and the Customer are entitled to withdraw from the contract. The aforementioned rights only apply to the Customer if he informs us of the relevant copyright infringements or industrial property right infringements without delay and supports us with defending the asserted claims or the required modification measures. The Customer's claims for the aforementioned defects in title are excluded if the infringement occurred because the Client modified the delivery item without proper authority or did not use it as per the terms of the contract.

## **VII. Liability**

(1) We are liable for damage that did not occur on the delivery item itself, for whatever reason, only in the case of intent, gross negligence, negligent loss of life, personal injury or illness, defects which we maliciously failed to disclose or whose absence we guaranteed and defects in the delivery item insofar as we are liable for personal injury or damage to privately used items under the Product Liability Act. In the case of a minor or grossly negligent breach of essential contractual obligations we are only liable for the amount of the contractually typical, reasonably foreseeable damage. In the event of the negligent breach of a contractually essential obligation our obligation to provide compensation for personal injury or damage to property is moreover limited to the indemnity of the product liability insurance. Any claims over and above that are excluded, especially all claims due to pecuniary damage, including lost profit.

(2) Should it transpire after the conclusion of the contract that the delivery item cannot be procured or manufactured for practical or economically unacceptable reasons, the Customer's rights are restricted to withdrawal from the contract to the exclusion of any further claims. The contract with the Customer is on condition that we ourselves are supplied with the required goods. Should unacceptable price increases occur in the area of procurement or should the supplier not be able to deliver or have filed for bankruptcy, we are entitled to withdraw from the contract.

## **VIII. Statutes of Limitation**

Claims for damages shall become statute-barred in accordance with the statutory provisions. Warranty claims shall become statute-barred in 12 months. All the Customer's other claims shall become statute-barred, on whatever legal grounds, in twelve months.

## IX. Warranty

Insofar as the Customer receives a warranty on our delivery items, this does not apply to damage:

- (1) due to an accident, i.e. an incident that involves a direct, sudden mechanical force acting from the outside,
- (2) due to wilful or malicious actions, misappropriation, especially theft, unapproved use, robbery or embezzlement, the indirect effects of storm, hail, lightning strikes, earthquakes or flooding as well as fires or explosions.
- (3) due to acts of war of any type, riots, civil war, civil commotion, strikes, lockouts, confiscation or other interventions or nuclear energy.
- (4) for which a third party as manufacturer or supplier is or was liable under a repair contract or under another warranty undertaking.
- (5) which occurs due to the use of unsuitable lubricants and operating materials.
- (6) which is caused by modification of the original construction.
- (7) which was caused intentionally or through gross negligence or where an attempt was made to fraudulently deceive with regard to facts which are important in terms of the reason for and the amount of the compensation.
- (8) which occurs when the manufacturer's instructions in the operating manual on the operation of the delivery item are not heeded.
- (9) when consequential damage occurs to a non-insured component due to an indemnifiable loss. The consequential damage is not covered.
- (10) the damage under warranty is not reported to us in writing within 8 days and the delivery item is not made available to us immediately for inspection of the damaged item, the information required to identify the damage is not supplied or instructions to reduce the damage are not followed.

## X. Retention of Title

- (1) We shall reserve the title to the delivery item until all the claims vis-à-vis the Customer which derive from the business relations with him have been settled, including claims arising in future from contracts concluded at the same time or at a later date. This also applies if individual or all our claims are included in a current invoice and the balance has been drawn and recognised. The retention of title also covers claims for which the Customer provides us with a cheque, but we give the Customer a bill of exchange for the purchase price sum in the cheque/bill of exchange procedure.
- (2) The Customer is entitled to resell the contractual item supplied subject to reservation of title in the course of ordinary business dealings; he shall however herewith already assign to us as security the Customer's claims arising against his clients in the amount of the agreed sale price of our contractual item supplied subject to reservation of title. The Customer is still entitled to collect the assigned claim as long as he has not fallen into payment arrears with respect to us. If we revoke the Customer's collection authorisation, the Customer is obliged to disclose the names of his clients to us on request, notify us of the amount of the claims to which we are entitled and provide all notifications which are expedient under the circumstances to enforce the claim.
- (3) The Customer is obliged to insure the contractual item supplied subject to reservation of title sufficiently against fire, burglary, theft, water damage, etc. on a new-for-old basis. In the event of a loss pursuant to sentence 1 of this section, the Customer is obliged to assign to us the claim to which he is entitled against the insurance company as compensation.
- (4) The Customer may neither pledge nor assign by way of security the contractual item subject to reservation of title. In the event of seizure or other interventions by third parties, the Customer shall inform us immediately in writing, so that we can file a suit in accordance with section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse us for the in-court or out-of-court costs of legal proceedings pursuant to § 771 ZPO, the Customer shall be liable to pay us the loss incurred.
- (5) Should the contractual item supplied subject to reservation of title be combined or blended with other items, the Customer shall assign to us joint title of the new item in proportion to the final invoiced amount of our contractual item supplied subject to reservation of title compared with the other combined or blended items at the time of combining or blending. If the contractual item supplied subject to reservation of title is combined or inseparably blended with other movable items to form a unified item, this item shall be seen as the main item. Insofar as the main item is owned by the Customer, he is obliged to give us pro rata joint title to the main item and to hold the item in safe custody for us free of charge. Otherwise, the provisions of this section apply accordingly to the item arising from the combining or blending.
- (6) The processing of the contractual item supplied subject to reservation of title shall always take place for us. If the contractual item supplied subject to reservation of title is further processed together with other items, joint title shall arise in proportion to the final invoiced amount of our contractual item compared with the processed product.
- (7) If the Customer falls into payment arrears, we are entitled to take back the contractual item subject to reservation of title without this being deemed an exercise of the right of withdrawal, unless the provisions of German Consumer Credit Law apply. In the case of realization of the contractual item subject to reservation of title, we are entitled to deduct 10% of the realization proceeds for the costs we incurred in connection with the realization, unless the Customer can prove to us that the costs we to which we are entitled have been settled.
- (8) If the realizable value of the security existing for us exceeds the Customer's liabilities by more than 20%, we are obliged in this respect to release security at our discretion upon the Customer's request. When determining the realizable value, we shall assume the purchase prices agreed in each case plus value added tax unless another calculation method is indicated.

## **XI. Data Protection**

(1) We undertake to comply with data protection legislation in accordance with the German Federal Data Protection Act (new BDSG) and the German Telemedia Act (TMG).

(2) Only the Customer's data which are necessary to safeguard our legitimate interests (contract processing) will be collected without the Customer's consent. The Customer's protection-worthy interests will be taken into consideration when storing or transmitting data.

(3) Insofar as payment on account has been agreed, we reserve the right to have a credit check carried out by an external service provider. The Customer already gives his consent thereto. In this case, data on orders as well as the start and end of a contractual relationship will be transmitted.

(4) The Customer shall receive information from us on stored data pertaining to him following a written request.

## **XII. Final Provisions**

(1) If the Customer is a general merchant, Cologne is the sole place of jurisdiction for all claims arising from contracts which are based on these Terms and Conditions of Business. We are however entitled to institute legal proceedings against the Customer at the court responsible for his place of residence.

(2) The place of performance for all obligations arising from contracts based on these Terms and Conditions of Business is our registered office unless otherwise stipulated in the written individual contract.

(3) The contract is subject to German law; the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded.

(4) Should any provisions of this contract be or become invalid or should it transpire that there is an omission in this contract, the validity of the remaining clauses shall not be affected thereby.

**(As of 04/2019)**