

# General Terms and Conditions for Commerce and Trade

## I. Offers and entering into agreements

(1) The Terms and Conditions of Delivery and Payment of Nolden Cars & Concepts GmbH, Robert-Perthel-Str. 27, 50739 Cologne, Germany, shall apply exclusively to all offers and agreements. Any conditions to the contrary shall not apply unless they are specifically stated in the overall order. We reject in advance the incorporation of any contradictory conditions in all cases. This shall also apply in the case that we enter into the agreement or provide the contractually owed service, in particular if we accept payments at the purchase price, in the knowledge of deviating or contradictory conditions of the customer.

(2) Verbal agreements of any nature shall only be binding if these have been confirmed by us in writing; this shall also apply to any additions, amendments or ancillary agreements of any kind.

(3) Documents provided with the offer and order, such as illustrations, drawings, indications of weights and dimensions, as well as performance and consumption information, are only approximate, unless they have been expressly specified as binding. We reserve all rights to cost proposals, drawings and other documents. These must not be made accessible to third parties.

(4) Our written order confirmation shall be decisive for the scope of the contractually agreed delivery/service. The customer shall be solely responsible for checking the technical compatibility of the Nolden products before entering into an agreement.

(5) We reserve the right to make technical changes and improvements to the contractually owed delivery/service, provided we can prove that these are reasonable for the customer.

## II. Prices/minimum quantity surcharge

(1) All the prices in our sales documents, price lists, offers, order confirmations and invoices are listed in euros, net, without any discounts or other reductions ex warehouse. Any packaging and shipping costs, along with statutory value-added tax, shall be shown separately.

(2) The prices named are the basis for the reference prices, raw material and energy prices, wages/social security contributions, freight rates and public duties indirectly and directly influencing the costs of goods valid at the time the offer is submitted. If these reference values are changed, we reserve the right to perform a corresponding price correction unless Section 310 German Civil Code (BGB) applies to the customer.

(3) We have no minimum order value for orders, however for orders below EUR 200.00 (gross), we charge a minimum quantity surcharge of EUR 25.00.



### III. Delivery - delay in delivery

(1) The term of delivery shall commence on the date of the order confirmation, but not before the customer has supplied the required documents, approvals or clearances, and not before any agreed deposit has been received.

(2) The term of delivery is deemed complied, if the delivery item has left the supply plant or the storage location, or the customer has been informed of readiness for delivery, before this term expires, unless otherwise agreed in writing.

(3) If we default in delivery, we undertake to pay the customer compensation for damage caused by the delay equating to 0.5% of the value of the contractual item that is the subject of the delay, but no more than 3%, for every full week of the delay. The customer may withdraw from the agreement, if the customer provides us with a reasonable grace period with threat of withdrawal, in writing, after we have already defaulted in delivery and we let this grace period elapse for reasons for which we are not responsible. In this case, the customer is only entitled to claim compensation if the delay in delivery is due to malicious intent or gross negligence, including the malicious intent or gross negligence of our vicarious agents.

(4) If the delivery is delayed due to circumstances attributable to the customer, after 14 days calculated from the day of notification of readiness for delivery, the customer shall be charged 1.0% of the sale price of the contractual item per month for the storage costs incurred at third parties and storage at the contractor. We are also entitled, after being granted a grace period which has fruitlessly expired, to dispose of the contractual item elsewhere and to provide the customer with a reasonable extension of the term of delivery.

(5) Compliance with the term of delivery shall be conditional upon the performance of the customer's obligations.

(6) If the customer remains in default with the handover of the contractual item or the fulfilment of its payment obligation for more than six weeks following notification of readiness to deliver, after granting a reasonable grace period of 14 days, we are entitled to withdraw from the agreement or to demand compensation due to non-fulfilment. If we demand compensation due to non-fulfilment, we may claim 15% of the sale price of the contractual item as damages. The damages can be set higher or lower, if we can prove that the damages are higher, or the customer proves that the damages are lower. If we do not assert this right, we have the authorisation – notwithstanding our other rights – to dispose of the contractual item freely and to provide in its place, within a reasonable period of time, an item of a similar type under the contractual terms and conditions.

(7) If the customer remains behind (default in payment) with the handover of the contractual item or the fulfilment of its payment obligation for more than four weeks after providing notification of readiness to deliver, Nolden is entitled to demand advance payment with regards to any outstanding deliveries to the customer.



(8) If the customer wishes to return products, for example because they have ordered a wrong product, Nolden is free to accept or reject the return. In the event that Nolden accepts the requested return, Nolden is entitled to demand a re-storage fee of 20% of the value of the goods, but at least EUR 25.00, from the customer. Nolden can only accept returned products if these are in perfect condition. Customised products cannot be returned. Nolden cannot accept returned products that have already been installed or that were delivered more than six months ago.

#### **IV. Transfer of risk – acceptance**

(1) Delivery shall take place at the cost and risk of the customer, unless otherwise agreed in writing. The risk of accidental damage or deterioration of the goods is transferred to the consumer upon delivery ex works or ex warehouse, unless otherwise agreed in writing.

(2) If the delivery is delayed on 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 responsible, the risk is transferred 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 – are to be borne by the customer.

(3) The customer shall be responsible for and shall pay for unloading the contractual item delivered.

#### **V. Payment**

(1) Unless specified otherwise in the order confirmation, the purchase price shall be payable, net, without any deductions, within 30 days of the invoice date and after receiving the contractual item.

(2) We are entitled, by way of deviation from paragraph (1), to demand a deposit from our customer, in particular if the customer does not have an adequate credit rating or is in default of payment, see Item III. (8).

(3) Nolden does not accept cheques or bills of exchange. Re-negotiation and prolongation are not considered as fulfilment. Collection and discount charges, as well as other fees, bank charges and customs handling costs, shall be paid by the customer.

(4) As a general rule, the customer is not entitled to offset counter-claims unless its counter-claims are legally established, undisputed or acknowledged by us in writing.

(5) The customer has a right of retention only if its counter-claim originates from the same contractual relationship.



(6) If the customer is in default with its payments, we are entitled to charge default interest of 9% p.a. above the basic interest rate of the Deutsche Bundesbank. For consumers, Section 288 (1) German Civil Code (BGB) applies. This shall not apply if we can prove that we suffered higher damages as a result of the default in payment, or if the customer can prove that they did not suffer any or only significantly less damages as a result of the default. Furthermore, we are entitled to claim a flat rate of EUR 40.00 in accordance with Section 288 (5) sentence 1 German Civil Code (BGB).

## VI. Warranty claims

(1) Warranty claims on the part of the customer are conditional upon the customer having duly met their inspection and defect reporting obligations as set out in Sections 377, 378 German Commercial Code (HGB). In particular, the customer shall check the delivered goods after receipt of the shipment at the agreed location or at our premises with regards to quantity, dimensions, form, condition and intactness, etc. If defects are found, these shall be listed in writing for each individual item in question and we must be notified in writing without delay, but no later than within eight days after receipt of the goods, providing a detailed description of the defect and specifying the serial number of the item in question. Defects which cannot be detected even after a thorough inspection shall be notified in writing promptly after they are detected. Sentence three shall apply accordingly. The time at which the goods leave our warehouse shall be decisive for the contractual condition of the goods. On this basis, for material defects and defects of title excluding any further claims, subject to the liability provisions under Item VII, we shall provide the following guarantee:

(2) We undertake, at our discretion, to repair or replace without defects all parts that prove to be defective as a result of circumstances that occurred prior to the transfer of risk. We must be notified immediately in writing if such defects are discovered. Any replaced parts shall become our property.

(3) Warranty obligations are excluded in the case of improper installation, commissioning or use by the customer and/or a party commissioned by them, as well as in the event of failure to comply with the provisions on handling (for example, failure to comply with Nolden's installation notes), servicing and maintenance, improper work involving changes or repairs, setup in unsuitable rooms, the effects of parts of different origin and other outside influences. Normal wear shall be excluded from the liability for defects. We accept no warranty obligation for damages that arise after the transfer of risk, in particular if these are due to incorrect and negligent handling during transport, storage, installation, operation or similar, and/or are attributable to normal wear.



(4) The customer shall send us the goods at their own expense for the purpose of inspecting the item in question. The customer shall, after consultation, provide us with the required time and opportunity to undertake all the repairs and replacement deliveries that we deem necessary, otherwise we shall not be liable for the resulting consequences. As an exception, in urgent cases where operating safety is endangered or to prevent disproportionately extensive damage, the customer shall have the right to rectify the defect themselves or have it rectified by a third party and request from us compensation for the required expenses.

(5) If the customer's complaint turns out to be justified, we shall pay the shipping costs incurred by the customer for the return of the defective goods to us. Furthermore, we shall bear the costs of any repairs or replacement delivery.

Acceptance of the costs incurred by the customer, if necessary, for removal and installation, is excluded. Processing of the customer's complaint in accordance with sentence 1 requires that the customer sends us a detailed description of the defect for each individual item about which a complaint has been raised along with an invoice for any subsequent costs not relating to the removal and installation costs to be borne by the customer itself, no later than within two months after the defect is discovered, whereby the serial number of the item in question must be marked on all the above-mentioned invoices. The two-month deadline is calculated according to Sections 187 (1), 188 (2) German Civil Code (BGB). If the customer fails to fulfil the existing obligation to provide proof and documentation, or fails to provide this in full, or not within the two-month deadline, we are entitled to definitively refuse to process the complaint and any subsequent costs not relating the removal and installation costs.

(6) If the customer's complaint turns out to be unjustified, the latter undertakes to pay the shipping costs incurred for the return of the alleged defective goods to us, as well as to pay any shipping costs incurred by us for returning the allegedly defective goods to the customer. The customer also undertakes to pay us a fixed compensation of EUR 60.00 including VAT for every item that has been queried. The customer has the right to demonstrate that no damages or significantly less damages have been incurred than the fixed compensation under sentence 2. We have the explicit right to claim additional damages.

(7) Under the statutory provisions, the customer has the right to withdraw from the agreement if they have set in writing a reasonable time limit for rectification or replacement delivery due to material defects and we have let this time limit expire without success. In the case of insignificant defects, the customer is only entitled to reduce the price. In all other respects, the right to a reduction is excluded.

(8) We shall not be liable for any resulting damages in the case that the customer or a third party commissioned by them performs rectification work themselves incorrectly.



(9) If use of the delivery item breaches copyrights or industrial property rights in the Federal Republic of Germany, the customer shall be given the right to continued use or the delivery item shall be modified for the customer in a reasonable manner so that the breach of property rights no longer exists. If this is not possible for economic reasons or not within a reasonable time, both we and the customer are entitled to withdraw from the agreement. The above rights shall exist for the customer only if the latter notifies us without delay of any relevant breaches of copyright or property rights and helps us to defend against any claims asserted against us and/or with the required modification measures. The customer's claims for the above defects of title are excluded if the legal infringement is due to the fact that the customer has modified the delivery item on its own authority or has not used it in accordance with the agreement.

## VII. Liability

(1) We are only liable for damages not arising on the delivery item itself, irrespective of the reasons, in the case of malicious intent, gross negligence, culpable injury to life, limb or health, in the case of defects that we have deliberately concealed or the absence thereof we have guaranteed, and in the case of defects in the delivery item insofar as we are liable for personal injury or material damage to privately used property under the German Product Liability Act.

In the event of a slight or grossly negligent breach of material contractual obligations, we shall only be liable for reasonably foreseeable damages typical of this type of agreement. In the case of a negligent breach of an essential contractual obligation, our obligation to compensate for material damage or personal injury shall also be limited to substitute performance under product liability insurance. Any other claims are excluded, in particular all claims due to financial losses, including any lost profit.

(2) Insofar as after signing the agreement it should transpire that the procurement or manufacture of the delivery item is not possible for practical reasons or reasons which make this not economically viable, the customer's rights to withdraw from the agreement excluding any further claims shall be limited. The agreement with the customer is on the condition that we ourselves are provided with the goods. If unreasonable price increases arise in the procurement area, the preliminary supplier cannot deliver, or insolvency proceedings have been filed, we are entitled to withdraw from the agreement.

(3) Nolden shall not be liable for its own failings or delays, or for the failings and delays of its suppliers, during the fulfilment of the agreement if such non-fulfilment or delay has been caused by force majeure. Force majeure includes, in particular, floods, earthquakes, typhoons, epidemics, pandemics or other natural disasters, war or armed conflict or the serious threat of such (including, but not limited to hostile attacks, blockades, embargoes, riots or uprisings), official orders or regulations (including, but not limited to bans or import/export restrictions) or other events that are outside the control of the contractual parties. Strikes, lockouts, traffic disruption, energy shortages, staff shortages, industrial unrest, defects or the inability to procure raw, auxiliary or operating materials, or other operational disruptions, are also explicitly deemed to be force majeure. In the case of force majeure, Nolden shall be released from its delivery obligation.



### VIII. Limitation period

Claims for damages shall expire in accordance with the statutory regulations. Warranty claims expire in 12 months. All further claims on the part of the customer – irrespective of the legal grounds – shall expire in twelve months.

### IX. Warranty

Insofar as we grant the customer a guarantee for the delivery items, this does not apply to damages:

- (1) Caused by accidents, i.e. a sudden, unexpected, powerful external event,
- (2) Caused by wilful or malicious actions, misappropriation, in particular theft, unauthorised use, robbery or embezzlement; by direct exposure to storms, hail, lightning strikes, earthquakes or flooding, as well as by fire or explosion.
- (3) Caused by any act of war, riots, civil war, internal unrest, strikes, lockouts, confiscation or other interventions, or by nuclear energy.
- (4) Attributable to a third party as the manufacturer, supplier derived from a repair order or from any other warranty promise.
- (5) Caused by the use of unsuitable lubricants and operating fluids.
- (6) Caused by changing the original design.
- (7) Which were brought about through malicious intent or gross negligence, or whereby attempts were made to maliciously distort facts which are significant for the basis or extent of the damage.
- (8) Which arise if the manufacturer's notes in the operating instructions for operating the delivery item are not observed.
- (9) If as a result of indemnifiable damages, consequential damage occurs on an uninsured component. The consequential damage is not insured.
- (10) Whereby any indemnifiable damages are not reported to us in writing within eight days and the delivery item is not provided to us immediately for inspection of the damaged item, the information required to determine the damage is not provided, or the instructions on how to reduce the damage is not followed.

### X. Retention of title

(1) We shall retain title to the delivery item until all receivables due to the customer have been settled, whereby these originate from the business relationship with the latter, including any future receivables resulting from agreements entered into at the same time or at a later date. This shall also apply if one or all of our receivables has/have been listed in a current invoice and the account balance has been settled and acknowledged.





(2) The customer is entitled to resell the contractual item, delivered without reservations, in the ordinary course of business; however, the customer shall assign us the right, by way of a security, with immediate effect, to the receivables due to them vis-à-vis their buyers amounting to the agreed sale price of our contractual item delivered without reservations as security. The customer remains entitled to collect the assigned receivables provided they are not in default in payment to us. If we withdraw the customer's collection authorisation, upon request, the customer undertakes to provide us with the name of their buyer, to inform us of the amount of the receivables owed to us and to provide all notifications to us that are relevant under the circumstances for enforcing the claim.

(3) The customer undertakes to adequately insure, to the new value, the contractual item delivered without reservations against fire, break-in, theft, water damage, etc. In the case of an insured loss in accordance with sentence 1 of this section, the customer undertakes to assign to us the existing claim to substitute performance vis-à-vis the insurance company.

(4) The customer may neither seize the contractual item under the retention of title nor transfer it by way of security. In the event of seizures or other interventions by third parties, the customer shall inform us immediately in writing so that we can bring legal action pursuant to Section 771 ZPO (German Code of Civil Procedure). If the third party is unable to reimburse our judicial and extra-judicial expenses which arise from this action pursuant to Section 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the loss incurred by us.

(5) If the contractual item delivered under retention of title is compounded or combined with other items, the customer shall assign us co-ownership of the new product as a proportion of the final invoice amount of our contractual item delivered without reservations to the other compounded or combined item at the time of the compounding or combining. If the contractual item delivered under retention of title is compounded or inseparably combined with other moving items to become a single item, this item shall be deemed the main item. Insofar as the main item belongs to the customer, the latter undertakes to transfer co-ownership of the main item to us proportionally and to store the item free of charge for us. In all other respects, the provisions of this section shall apply accordingly to the compounding or combining of the resulting item.

(6) The processing of the contractual item delivered under retention of title is always carried out on our behalf. If the contractual item delivered under retention of title is further processed together with other items, this shall give rise to co-ownership as a proportion of the final invoice amount for our contractual item to the processed product.





(7) Insofar as the customer defaults in payment, we are entitled to take back the contractual item under the retention of title without this being considered as exercising our right to withdraw, unless the provisions of the Consumer Credit Act apply. In the case, that the contractual item under retention of title is reused, we are entitled to deduct 10% from the proceeds of the sale for the costs we incur in connection with the reuse, unless the customer can prove to us that the costs incurred as a result are significantly lower. We undertake to pay out to the customer any proceeds from the sale provided we have satisfied any claims against us which are due.

(8) If the realisable value of our securities exceeds the amount of our liabilities by more than 20%, we shall be obligated, upon request of the customer, to release securities in this respect at our discretion. When determining the realisable value, we base this on the individually agreed purchase prices plus value-added tax, unless a different calculation method is indicated.

## **XI. Data protection**

(1) We guarantee data protection in compliance with the General Data Protection Regulation, German Federal Data Protection Act (Bundesdatenschutzgesetz) and the German Telemedia Act (Telemediengesetz).

(2) Without the customer's consent, only customer data that is needed to ensure our legitimate interests (implementation of the agreement) shall be collected. The customer's legitimate interests shall be taken into account when storing or transmitting data.

(3) If a payment on account is agreed, however, we reserve the right to have a credit assessment performed by an external service provider. The customer hereby declares their consent to this. In this case, data relating to the order as well as the acceptance and termination of a contractual relationship shall be transferred.

(4) Upon written request, the customer shall receive information about the data stored relating to them.



## XII. Final provisions

(1) If the customer is a registered trader, Cologne (Germany) shall be the exclusive place of jurisdiction for all claims arising from agreements on which these General Terms and Conditions of Business are based. However, we are also entitled to bring action against the customer in the court responsible for their (habitual) place of residence.

(2) Unless specified otherwise in writing in the individual agreement, the place of performance for all obligations arising from agreements on which these General Terms and Conditions of Business are based, shall be our head office.

(3) The agreement is subject to German law; the provisions of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

(4) Should one or several provisions of this agreement be or become ineffective, or should a loophole be found in this agreement, the validity of the remaining provisions shall remain unaffected.

Nolden Cars & Concepts GmbH

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