

## **Terms and Conditions for NUM GmbH**

### **Section 1 Scope**

- (1) These terms and conditions are valid for all commercial relationships with customers of NUM GmbH, provided they are registered businesses or legal entities under public law. The customer acknowledges our terms and conditions as binding for the contract at hand and for all future transactions.
- (2) Exclusively these terms and conditions shall apply; NUM GmbH does not acknowledge contradictory or differing terms and conditions, except where they are explicitly agreed to in writing.
- (3) These terms and conditions shall apply to all future transactions with the customer, provided they are legal transactions of a similar kind.
- (4) All agreements made between NUM GmbH and the customer in regard to execution of this contract are set out in writing in this contract.

### **Section 2 Offer and conclusion of the contract**

- (1) Orders and their modification must be in writing.
- (2) Oral agreements before, during or after conclusion of the contract, in particular subsequent additions to the terms and conditions of NUM GmbH, shall only be effective if they are confirmed in writing by NUM GmbH.
- (3) All offers are subject to change without notice and must not be disclosed to third parties without the prior written consent of NUM GmbH.

### **Section 3 Delivery/commissioning**

- (1) All agreements on deliveries, especially schedules, must be in writing.
- (2) NUM GmbH shall not be liable for delayed deliveries that are caused by force majeure or other events that were unforeseeable upon conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials and energy, transport delays, strikes, lawful lockouts, difficulties in the procurement of necessary official permits, official measures or failure by suppliers of NUM GmbH to make punctual deliveries) that are not the responsibility of NUM GmbH. Where such events significantly obstruct or prevent NUM GmbH in its performance of the delivery or service, and such impairment shall not be temporary, NUM GmbH shall be entitled to withdraw from the contract. Where obstructions are temporary, the periods for delivery or performance shall be extended, or the periods for delivery or performance shall be postponed by the period of obstruction, in addition to a reasonable lead time.
- (3) Where NUM GmbH fails to perform an agreed service or fails to perform it in its contractual form, the customer shall be entitled, after extending an appropriate goodwill period for performance or subsequent performance of the contract, to withdraw from the contract.
- (4) The goodwill period and the withdrawal must be declared in writing.
- (5) NUM GmbH is liable according to the statutory provisions, provided the underlying contract is a transaction on fixed terms pursuant to Section 286(2)(4) German Civil Code (BGB) or Section 376 German Commercial Code (HGB). NUM GmbH shall also be liable according to the statutory provisions insofar as the customer is entitled, due to a delayed delivery for which NUM GmbH is responsible, to declare that it is no longer interested in the performance of the contract.
- (6) NUM GmbH is liable furthermore according to statutory provisions insofar as a delayed delivery was caused by a breach of contract on its part that is based on culpable intent or gross negligence; the actions of representatives or vicarious agents of NUM GmbH shall be equivalent. Where the delayed delivery is due to gross negligence on the part of NUM GmbH, any liability for damages shall be limited to foreseeable and typical damage.

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- (7) NUM GmbH shall also be liable according to statutory provisions insofar as the delayed delivery for which it is responsible is due to a culpable violation of an essential contractual obligation; liability shall be limited in this case to foreseeable and typical damage.
- (8) NUM GmbH shall otherwise be liable for delayed deliveries in the amount of 3% of the delivery value for each full week, but no more than 15% of the delivery value, payable as a lump sum for arrears.
- (9) NUM GmbH shall only be entitled to make part deliveries if
  - a. the customer can be reasonably expected to accept part deliveries with due consideration of the contractual purpose of the ordered goods;
  - b. delivery of the remaining quantities of ordered goods is certain; and
  - c. the customer does not experience a significantly greater workload or incur additional costs due to the part deliveries (except where NUM GmbH agrees to accept these costs).
- (10) Adherence to delivery obligations by NUM GmbH and in particular fixed delivery agreements shall be predicated on the punctual and orderly fulfilment of the customer's duties and obligations to cooperate.
- (11) Where the customer is delayed in the acceptance of deliveries or otherwise culpably infringes its duties and obligations to cooperate, NUM GmbH shall be entitled to claim indemnification, including any additional workload. This is without prejudice to other claims or rights.
- (12) Where the conditions set out in Section 3(10) apply, the risk of accidental loss or deterioration of the ordered goods shall be transferred to the customer from such time at which it defaults on acceptance or payment.

### Section 4 Shipping, transfer of risk, acceptance

- (1) The risk of accidental loss or deterioration of the ordered goods shall be transferred to the customer as soon as the goods have departed the plant or the warehouse of NUM GmbH. The transfer of risk in cases where Section 4(3) applies shall be based exclusively on the provisions set out therein.
- (2) The goods will be packaged according to customary technical and commercial considerations. The customer must pay all costs of packaging, plus an administrative fee set at the discretion of NUM GmbH and in accordance with the provisions of the individual contract. NUM GmbH will not accept the return of any packaging material. Fees for rented containers and Deutsche Bahn containers will be charged separately. The customer shall pay all the costs incurred by NUM GmbH in connection with shipping the goods. Where requested by the customer, NUM GmbH will conclude a transport insurance policy on behalf of the customer, which shall charge on a cost basis.
- (3) Where acceptance is agreed, it shall be authoritative for the transfer of risk. The customer must accept services once notice of their completion has been received from NUM GmbH. Where acceptance is delayed due to circumstances for which the customer is responsible, the transfer of risk shall take place on the date of notification.
- (4) Where acceptance is agreed, it shall be considered issued once
  - a. delivery and, insofar as it is the responsibility of NUM GmbH, installation are complete;
  - b. NUM GmbH informs the customer and instructs it to accept the performance with due notification of the assumption of acceptance according to Section 4(4);
  - c. twenty workdays have passed since delivery or installation of the goods, or ten workdays have passed since delivery or installation and the customer has started to use the goods; and
  - d. the customer has failed to accept the goods within this period for a reason other than due to a defect duly reported to NUM GmbH that would prevent or significantly obstruct the customer in the use of the goods.

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### Section 5 Prices and terms of payment

- (1) The NUM GmbH prices shall apply ex works unless otherwise agreed in writing. All prices are exclusive of packaging, shipping, transport insurance and the statutory rate of value added tax.
- (2) Except where stated otherwise in the order confirmation, payment must be made in full and without any deductions to the account of der NUM GmbH immediately after delivery.
- (3) NUM GmbH will only accept alternative terms of payment defined in the order if it has confirmed them in writing.
- (4) Where the customer fails to satisfy its payment obligations, NUM GmbH shall be entitled to cancel the contract with immediate effect and without prior notice.
- (5) Where the customer is in default with payment, NUM GmbH shall be entitled to charge interest of 8 percentage points above the base interest rate. This is without prejudice to the assertion of greater damages caused by delayed payment.
- (6) The customer shall only be entitled to offset claims with counterclaims that have been finally adjudicated upon, are uncontested or have been accepted by NUM GmbH. Moreover, the customer is only entitled to assert the right of retention insofar as the counterclaim refers to the same contractual relationship.
- (7) Where the customer is in default with payment, NUM GmbH shall be entitled to suspend all further deliveries to the customer, also where additional delivery contracts have been concluded already.
- (8) NUM GmbH is entitled to place separate invoices for each part delivery.

### Section 6 Reservation of title

- (1) NUM GmbH reserves title to the delivered goods and services until all past and current receivables arising from the contractual relationship with the customer – irrespective of the kind and the legal basis – have been settled. Where the customer is in breach of contract – especially in default of payment – NUM GmbH shall be entitled to take back the goods. This shall apply accordingly if the customer is over-indebted or has filed for insolvency. Taking back of the goods by NUM GmbH shall also constitute cancellation of the contract. The goods shall be at the free disposal of NUM GmbH once they have been taken back, and the proceeds of their marketing shall be deducted from the customer's payables, less a reasonable marketing fee.
- (2) Where the reserved goods are processed or joined with other items that do not belong to NUM GmbH, NUM GmbH shall acquire a co-ownership right to the new items in a proportionate relationship commensurate with the value of the delivered goods relative to the other third-party material. The customer shall store the new items free of charge on behalf of NUM GmbH. The customer automatically assigns to NUM GmbH its ownership, i.e. co-ownership rights to the new, joined inventory or item.
- (3) The customer shall be entitled to process and sell the reserved goods in the ordinary course of its business operations, provided it is not in default of payment. It is prohibited to pledge the reserved goods or to transfer them by way of security.
- (4) The customer must send NUM GmbH written notice without undue delay in the event of any confiscations or other interventions by third parties so that NUM GmbH may take legal action according to Section 771 German Code of Civil Procedure (ZPO). Where the third-party is unable to reimburse NUM GmbH for the court and out-of-court costs of legal action in accordance with Section 771 ZPO, the customer shall be liable to NUM GmbH for these losses.
- (5) All future receivables that the customer may charge to its contractual partner based on the resale of the reserved goods or on other legal grounds (insurance/tort) are automatically assigned by the customer to NUM GmbH by way of security, without a separate declaration becoming necessary at a later date. This assignment applies also to balance receivables from current account relationships or upon termination of such arrangements by the

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customer in dealings with its contractual partner. Where the reserved goods are resold together with other items or after processing without agreement of an individual price for the reserved goods, the customer shall, at a priority ranking higher than other receivables, assign to NUM GmbH the portion of the overall purchase price receivable that is equivalent to the amount invoiced by NUM GmbH for the reserved goods.

The customer is authorised until further notice to collect the receivables assigned to NUM GmbH in its own name. Notwithstanding, the customer is not authorised to dispose of these receivables in any other way, e.g. by assignment. The authorisation to collect the receivables will only be withdrawn if the customer is in default of payment, has filed for insolvency or has suspended payments.

Upon instruction by NUM GmbH to do so, the customer must write to its contractual partners informing them of the assignment, issue to NUM GmbH all of the documents that NUM GmbH requires to exercise its rights toward the contractual partners, for instance invoices, and otherwise provide all necessary information. The customer shall carry all costs of collection and necessary intervention. Moreover, the customer must grant NUM GmbH access to the reserved goods remaining in its possession, transmit a precise list of the goods, quarantine the goods and release the goods when instructed to do so.

- (6) Where the value of the retained securities exceeds the value of the claim by NUM GmbH to payment of the purchase price by at least 25%, NUM GmbH will, upon instruction to do so by the customer, release securities to the customer at its own discretion. The customer carries the burden of proof to demonstrate that the value of retained securities exceeds the claim for payment of the purchase price by 25% or more.

### Section 7 Liability for defects

- (1) The customer or a third party designated by the customer must inspect the goods immediately after delivery, except where acceptance is agreed. Delivered goods shall be considered approved insofar as obvious defects or other defects that would be immediately discovered by means of a careful inspection performed without undue delay are not reported by the customer to NUM GmbH in writing within seven working days of delivery. In regard to all other defects, the delivered goods shall be considered approved unless a written notice of defects is received from the customer within seven working days of discovering the defect or at an earlier date at which the customer would have discovered the defect without closer inspection through ordinary use of the goods.
- (2) The limitation period in regard to claims for defects in goods supplied by NUM GmbH – irrespective of the legal grounds – shall be 12 months for new products and 6 months for repaired goods, in each case ex works or warehouse. Where acceptance is agreed, the limitation period shall begin with acceptance of the goods.
- (3) In the event of a defect for which NUM GmbH is at fault, NUM GmbH will, at its own discretion, repair the defect or organise a new delivery/performance, provided the notification of defects is received on time. Where the customer requests indemnification in lieu of performance or opts to rectify the defect itself, a failure of subsequent performance shall only apply after the second unsuccessful attempt.
- (4) Defect claims shall not be accepted for insignificant deviations from agreed properties, insignificant impairments of usefulness, in cases of natural wear or for damages caused by incorrect or negligent handling or particular external influences that were not foreseen in the contract and that occur after the transfer of risk. Defect claims and all follow-on claims shall also be voided by improper maintenance or modifications by the customer or third parties.
- (5) In case of a notice of defects, the customer undertakes to return the defective goods to NUM GmbH on its own account and at its own risk and to enclose with the goods a precise description of the defect and a copy of the delivery note. NUM GmbH reserves the right to charge the customer for the costs of examination insofar as further investigations reveal that the complaint is not sustainable.

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- (6) Where the customer exercises claims for indemnification that are based on wilful intent or gross negligence, including the wilful intent or gross negligence of NUM GmbH's representatives or vicarious agents, NUM GmbH shall be liable according to statutory provisions. Liability shall be limited to the predictable and typical damages if NUM GmbH is not accused of a culpable breach of contract.
- (7) NUM GmbH is liable according to statutory provisions insofar as it culpably violates an essential contractual obligation; in this case also, liability for damages shall be limited to the predictable and typical damages.
- (8) Where the customer is otherwise entitled to a claim to indemnification in lieu of performance due to a negligent breach of contract, the liability of NUM GmbH shall be limited to replacement of the predictable, typical damages.
- (9) This is without prejudice to liability for culpable injury to life, limb or health; the same shall apply to mandatory liability according to the German Product Liability Act (ProdHaftG).
- (10) Liability shall be excluded in all other cases.

### **Section 8 Marking of goods, patent guarantee**

- (1) Any modification of the NUM GmbH goods, removal of the NUM GmbH device number and nameplates and the attachment of any special markings that are used by the customer or a third party as marks of origin or that might create the appearance of a special product are prohibited.
- (2) NUM GmbH assures with acceptance of liability that no other third party in any country of the world, excepting the USA and Japan, holds industrial property rights to the sold goods in their present condition. Where third parties from these countries seek to exercise claims, NUM GmbH will, as its own discretion and on its own account, either undertake to obtain a license for the sold goods in their present condition, replace them with goods that are not subject to industrial property rights or take back the goods and reimburse the purchase price. Section 7(9) shall apply accordingly to any further claims.
- (3) Where custom goods are produced according to customer specifications, NUM GmbH will not accept any liability that they are free of third-party industrial property rights. This shall also apply if NUM GmbH contributes to the development or has developed the goods according to customer specifications.

### **Section 9 Data protection**

- (1) The customer consents to the processing by NUM GmbH of data collected in connection with the business relationship, irrespective of whether the data was obtained from the customer itself or from third parties. Data processing shall take place in accordance with the Federal Data Protection Act (BDSG) and the current EU General Data Protection Regulation (GDPR).

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### Section 10 Miscellaneous

- (1) The customer is instructed that export authorisation is required for the individual goods (embargo goods). The customer must present this authorisation to NUM GmbH together with its order.
- (2) The laws of the Federal Republic of Germany shall apply to the exclusion of international law. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- (3) The legal venue for all disputes arising directly or indirectly from contractual relationships that are based on these terms and conditions is Stuttgart.
- (4) The invalidity of any provision in these terms and conditions and/or any other agreement, now or in the future, shall not affect the validity of these terms and conditions as a whole. The contractual partners undertake to replace the invalid provision with a provision that most closely resembles the intended purpose.

For the current Terms and Conditions, visit:

<https://num.com/agb/>