

GENERAL TERMS AND CONDITIONS of NOMI Co-Packing B.V.

GENERAL TERMS AND CONDITIONS

1. These General Terms and Conditions are applicable to all offers, products and goods supplied, agreements, execution and other obligations and commitments, unless otherwise expressly agreed in writing between the parties, which are directly or indirectly related to the activities and other business operations of NOMI Co-Packing B.V., a private limited liability company (*besloten vennootschap*) having its principal place of business at Pauvreweg 46 in Eten-Leur, hereinafter: Nomi.
2. Third parties, including a Buyer or client, shall hereinafter be referred to as: "Other Party".
3. The applicability of possible purchasing or other terms and conditions of an Other Party is expressly rejected, unless they have been accepted by Nomi in writing.
4. If one or more provisions of these general terms and conditions is at any time, either in full or in part, null and void or cancelled then the remaining provisions of these general terms and conditions shall remain in full force and effect. Nomi and the Other Party shall then enter into discussions in order to agree on new provisions in replacement of the null and void or cancelled provisions, in the course of which the objective and the scope of the original provisions shall be taken into account as much as possible.
5. In case of an obscurity about the interpretation of one or more provisions of these general terms and conditions the interpretation must take place 'in the spirit' of these provisions.
6. If a situation occurs between the parties that has not been catered for in these general terms and conditions this situation must be assessed in the spirit of these general terms and conditions.
7. If Nomi does not always desire strict compliance with these terms and conditions this does not imply that the provisions thereof are not applicable, or that Nomi would to any extent forfeit the right to in other instances desire strict compliance with the provisions of these terms and conditions.

OFFERS AND ORDERS

Article 1.

1. All prices and quotations appearing in any price list, circular, advertisement, order confirmation and offer published or issued by Nomi as well as all quotations submitted by Nomi shall be valid for a period of no more than 2 months, unless stated otherwise in any document, and may furthermore be revoked by Nomi within two working days after receipt by Nomi of confirmation of the Other Party's acceptance. Nomi cannot be held to comply with its offers or proposals if the Other Party can within reason understand that the offers or proposals or a part thereof contain an apparent mistake or clerical error.
2. All quotations, offers and order confirmations are based on data available to Nomi at the time of their submission or issue. In the event of any changes with regard to the circumstances on the basis of which Nomi submitted or issued the aforementioned quotations, offers and order confirmations, Nomi shall be entitled to take such changes into account when performing the obligation/agreement, or to adjust the prices, without prejudice to the provisions in the preceding paragraph. If a legally valid agreement has been concluded, Nomi may only invoke circumstances for a possible change if they occur not more than three months after the date of conclusion of the agreement.
3. The prices indicated in an offer or proposal are excluding VAT and other official duties, possible costs to be incurred within the framework of the agreement, including travel and accommodation expenses, shipment and administration costs, unless indicated otherwise.
4. If any changes in an assignment occur after an agreement has been concluded, Nomi must be notified thereof by the Other Party as soon as possible. The risk that the changes will (not) be implemented shall be for the Other Party's account until such time as the changes concerned have been confirmed in writing by Nomi. Nomi shall not be liable in any way if it is no longer possible to implement the changes or to take them into account when executing the work. All additional costs associated with the aforementioned changes shall be borne by the Other Party.
5. If the acceptance (whether or not on subordinate points) deviates from that which is offered in the offer or proposal Nomi shall not be bound by the same. The agreement is in that case not concluded in accordance with this deviating acceptance, unless Nomi indicates otherwise in writing.
6. A combined quotation shall not oblige Nomi to perform a part of the assignment against a corresponding part of the indicated price. Proposals or offers are not automatically applicable to future orders.
7. Without thus being in default, Nomi can refuse a request for change of the agreement if this could, from a qualitative and/or quantitative perspective, have any consequences, for example for the activities to be performed or the goods to be delivered in that context.
8. Nomi shall implement the agreement to the best of its ability and knowledge and in accordance with high standards. All in pursuance of the then known state of the art.

REPRESENTATION

Article 2.

1. Obligations/agreements which are entered into in Nomi's name shall only bind Nomi if they have been entered into or confirmed, which confirmation shall be made explicitly and in writing, by the suitably authorised executive director, or by his suitably appointed proxy holder.
2. Nomi shall be the only party entitled to invoke default in respect of the representative authority referred to in paragraph 1.
3. Nomi shall not be bound by any offers, arrangements or agreements with subordinates of Nomi, unless said offers, arrangements or agreements have been confirmed in writing by the competent executive director or his proxy holder. Subordinates are deemed to be employees of Nomi who do not have adequate power of attorney.

PERIODS AND TERMS OF DELIVERY

Article 3.

1. Any periods and terms of delivery quoted by Nomi shall, without prejudice to the provisions in paragraph 2 below, be without obligation and shall not be deemed an absolute deadline as defined by the law.
2. Any failure by Nomi to meet a deadline for delivery shall only result in default on the part of Nomi if Nomi, after having been given notice of default in writing by the Other Party, subject to a reasonable term for performance, after the expiry of the period for delivery, fails to remedy its non-performance within the aforementioned reasonable term.
3. Nomi shall be free to deliver in parts and to invoice the thus performed part separately.
4. Delivery takes place ex works Nomi. The Other Party is held to take receipt of the goods at the moment that the same are made available to the Other Party. If the Other Party refuses to take receipt or fails to supply information or instructions that are required for the delivery, Nomi shall be entitled to store the goods at the expense and risk of the Other Party. The risk of loss, damage or depreciation transfers to the Other Party at the moment when the goods are at the free disposal of the Other Party. If the agreement is implemented in phases Nomi can suspend the parts that pertain to a subsequent phase until the Other Party has approved the results of the preceding phase in writing. The Other Party sees to it that all data of which Nomi indicates that they are required or of which the Other Party should within reason understand that they are required for the implementation of the agreement are timely supplied to Nomi. If the data required for the implementation of the agreement are not supplied to Nomi in a timely fashion, Nomi shall be entitled to suspend the implementation of the agreement and/or to charge the additional costs deriving from the delay to the Other Party in accordance with the then common fees. The implementation period does not start any sooner other than after the Other Party has made the data available to Nomi. Nomi shall not be liable for damages, of any nature whatsoever, resulting from the fact that Nomi assumed incorrect and/or incomplete data supplied by the Other Party.
5. If it becomes apparent during the implementation of the agreement that a proper implementation thereof requires changing or supplementing the same, then the parties shall timely enter into discussions in order to proceed with adjustment of the agreement. If the

nature, scope or content of the agreement is changed, whether or not at the request of the Other Party, competent authorities, etc., and the agreement is consequently changed from a quantitative and qualitative perspective, this can affect that which has originally been stipulated. As a consequence the originally stipulated amount can also be increased or reduced. Nomi shall as much as possible provide a prior quotation for this. A change in the agreement can also affect the originally indicated implementation period. The Other Party accepts the possibility of a change in the agreement, including a change in the price and implementation period.

6. If the agreement is changed, including a supplement, Nomi shall be authorised to only implement the same after the authorised person within Nomi has agreed with this and the Other Party agreed with the price and the other terms and conditions specified for the implementation, including the time then to be determined for the implementation thereof. The failing or not immediate implementation of the changed agreement shall not result in default on the part of Nomi and is not a ground for the Other Party to terminate or cancel the agreement.

PRICES

Article 4.

1. All prices quoted by Nomi shall apply to delivery ex factory, warehouse or workshop, and shall be in Euros and are excluding VAT.
2. If Nomi stipulates a fixed fee or a fixed price with the Other Party, Nomi shall nonetheless at all times be authorised to increase this fee or price without the Other Party in that case being entitled to dissolve the agreement on that ground, if the increase of the price derives from an authority or obligation pursuant to the legislation or regulations or is caused by an increase of the price of raw materials, salaries, etc. or on other grounds that could within reason not have been foreseen at the time of the conclusion of the agreement.
3. If the price increase, other than as a result of a change of the agreement, exceeds more than 5% and takes place within three months after the conclusion of the agreement only the Other Party who is entitled to rely on Title 5 Section 3 of Book 6 of the Dutch Civil Code shall be entitled to dissolve the agreement by giving written notice, unless Nomi
 - a. is still willing to implement the agreement on the basis of the originally stipulated provisions;
 - b. if the price increase derives from an authority or an obligation on the part of Nomi pursuant to the law;
 - c. if it has been stipulated that the delivery shall take place more than three months after the conclusion of the agreement;
 - d. or, in case of delivery of a good, if it has been stipulated that the delivery shall take place more than three months after the purchase.
4. Unless otherwise explicitly agreed, the agreed price shall not include the transport costs incurred by the Other Party for the benefit of the Other Party.

PAYMENT

Article 5.

1. Payment shall be made at Nomi's registered office in a manner to be specified by Nomi and in Euros.
2. Payment shall be made within no more than 30 days after the date of invoice, unless a different term has been agreed in writing between the parties. Nomi shall be authorised to invoice periodically.
3. The VAT due on the goods and services provided shall be paid in full upon delivery.
4. Nomi may at all times demand security for the performance by the Other Party of its obligations before proceeding to make delivery or continuing delivery if it has good grounds for fearing that the Other Party will not perform its obligations.
5. If the Other Party fails to perform any payment obligation as referred to above, Nomi shall be entitled to suspend all its obligations under the agreement as well as under any other similar commitment vis-à-vis the Other Party.
6. The Other Party shall itself be liable for any loss or damage which it will incur or suffer as a result of Nomi's power to suspend arising from paragraph 5, or it shall be obliged to provide further security for the benefit of Nomi as a result of a circumstance referred to in paragraph 4.
7. Every payment made by the Other Party to Nomi shall, regardless of its cause, be used:
 - firstly, to settle any obligation of the Other Party vis-à-vis Nomi to pay compensation;
 - then to settle any sums which the Other Party owes Nomi by way of costs and interest;
 - and finally, to settle any invoices and bills which are still to be paid to Nomi. Every payment will always be used to settle the Other Party's longest standing obligation vis-à-vis Nomi, with due regard for the order of payment referred to in the preceding paragraph.
8. The Other Party shall never be authorised to any setoff against that which the Other Party is held to pay Nomi. Objections to the level of an invoice shall not suspend the payment obligation. The Other Party who is not entitled to rely on Section 6.5.3 (articles 231 up to and including 247 of Book 6) of the Dutch Civil Code shall neither be entitled to suspend the payment of an invoice on any other ground.

DEFAULT

Article 6.

1. The Other Party shall be in default without notice of default being required from the moment it fails in any performance due on demand under the agreement vis-à-vis Nomi (including these terms and conditions), or is late in such performance.
2. Any failure by the Other Party to meet any deadline under the agreement (including these terms and conditions) shall result in that party's immediate default.
3. If the Other Party fails to properly comply with that which the Other Party is held to do vis-à-vis Nomi, the Other Party shall be liable for all damages on the part of Nomi directly or indirectly resulting there from.
4. Without prejudice to the right to demand performance, to suspend the further performance of the agreement or to terminate the agreement, Nomi shall also have the right, from the moment the Other Party is in default, to demand compensation for any loss or damage which it will incur or suffer as a result of the failure, which loss or damage will be set at not less than 30% of the value of the goods and services to be provided by the Other Party.
5. If the Other Party fails to perform its obligations to pay a sum of money in good time, it shall be liable to pay Nomi interest on the amount owing at that time at the rate of 2% per month from the moment the default commences, with any part of a month being deemed equal to a full month.
6. All claims of Nomi against the Other Party shall be immediately due and payable, without reservation, from the moment the Other Party is in default.
7. Regardless of default, Nomi shall have the right to terminate the agreement if there is reasonable cause for assuming that the Other Party will not perform its obligations, will go into liquidation or will file for suspension of payment, without notice of default or judicial intervention being required, and without prejudice to any of Nomi's other rights, such as the right to compensation.
8. If an agreement is terminated due to a cause that is not attributable to Nomi, and is also not for its account, Nomi shall be entitled to recover all losses arising for it due to such termination from the Other Party, which losses will be set at not less than 30% of the value of the goods and services to be provided by the Other Party.

RIGHT OF RETENTION

Article 7.

1. If the Other Party fails to perform any (payment) obligation, Nomi shall have the right to suspend all its obligations under the agreement as well as the right to postpone delivery of the goods, which Nomi will retain for the Other Party, until the claim is satisfied.
2. Nomi may also invoke the right of retention referred to under paragraph 1 against third parties.
3. The costs of storage incurred by Nomi, which shall amount to at least €113.45 per day or part of a day, shall be charged to the Other Party and must be settled before the goods will be delivered.

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DEBT COLLECTION

Article 8.

1. If Nomi, in order to recover amounts which are due and payable from the Other Party, takes action to recover such debt, all related costs, be they extrajudicial collection costs or the costs of collection through the courts, including the costs of litigation and the costs of legal assistance, shall be for the Other Party's account.
2. The extrajudicial costs intended in paragraph 1 are calculated on the basis of the calculation method according to the Voorwerk II Report, with a maximum of € 113.45. However, if Nomi incurs higher costs for the collection that were within reason required, the actually incurred costs qualify for compensation.
3. If the agreement has been concluded with two or more parties, they shall each be jointly and severally liable for the performance of the obligations arising from the agreement.

LIABILITY

Article 9.

1. All liability for the following instances of loss or damage is expressly excluded:
 - a. consequential loss or damage, including *inter alia* trading loss, business interruption and loss of profits;
 - b. loss or damage caused by auxiliary persons who have been engaged by Nomi or third parties, even where there is evidence of intentional act or gross negligence;
 - c. loss or damage caused by employees of Nomi who have been seconded to the Other Party;
 - d. loss or damage incurred or suffered by the Other Party due to claims of third parties.
2. Nomi shall not be obliged to provide any further warranty than the warranty issued to Nomi by the supplier of the goods and raw materials that have been delivered.
3. If the loss or damage concerned is covered by insurance, Nomi's liability shall be limited to the amount to be paid out under such insurance. Without prejudice to the provisions concerning force majeure, an obligation on the part of Nomi to pay compensation in case of not, untimely, defective or incomplete delivery is fully complied with if delivery still takes place or, if delivery is impossible and this impossibility cannot be blamed on the Other Party and/or is beyond the control of the Other Party, through payment of an amount of at most the stipulated price.
4. If a defect occurs as a result of or derives from injudicious or improper use thereof or use after the best before date, incorrect storage or maintenance thereof by the Other Party and/or third parties when, without written approval of Nomi, the Other Party or third parties made or tried to make changes to the good, other goods were attached to the same that are not supposed to be attached to it or if goods were treated or processed in a manner other than prescribed Nomi shall not be liable for this, Nomi shall neither be liable if the defect is caused by or is the result of circumstances beyond the control of Nomi, including weather conditions (including but not limited to extreme rainfall or temperatures), etc.
5. The Other Party is held to immediately inspect (have inspected) the delivered goods at the moment when the goods are made available respectively the relevant activities were carried out. In this context the Other Party is to examine as to whether the quality and/or quantity of the delivered goods corresponds with that which has been stipulated and complies with the requirements agreed on in this context by and between the parties. Possible invisible defects must forthwith, but in any case within fourteen days after discovery thereof, be reported to Nomi in writing. The notification must contain a detailed description of the defect so that Nomi is able to react adequately. The Other Party must give Nomi the opportunity to examine (have examined) the complaint. Should Nomi be liable then this liability shall be limited to that which is set forth in this provision.
6. Nomi shall neither be liable for damages, of any nature whatsoever, occurring as Nomi assumed incorrect and/or incomplete data supplied by or on behalf of the Other Party.
7. Should Nomi be liable for any form of damages then the liability of Nomi shall at all times be limited to at most the value of the invoice of the order, at least up to that part of the order to which the liability is related.
8. The liability of Nomi shall in any case at all times, as the occasion arises, be limited to the amount of the benefit paid out by its insurer.
9. Nomi is exclusively liable for direct damages. Direct damages is exclusively understood as the reasonable costs for the establishment of the cause and the scope of the damages, to the extent that the establishment is related to damages within the meaning of these terms and conditions, the possible reasonable costs incurred to have the defective performance by Nomi comply with the agreement, to the extent that this can be blamed on Nomi, and reasonable costs incurred to avoid or prevent damages, to the extent that the Other Party demonstrates that these costs resulted in a limitation of direct damages within the meaning of these general terms and conditions. Nomi shall never be liable for indirect damages, including consequential damages, lost profit, lost savings and losses due to business interruptions.
10. The limitations of liability included in this article are not applicable if the damages can be blamed on intent or gross negligence on the part of Nomi or its (managerial) subordinates.

CLAIMS

Article 10.

1. Any claims must reach Nomi within no more than fourteen days after the delivery date, or the date on which the event which the Other Party invokes occurred, at the risk of all the Other Party's rights lapsing.
2. If the Other Party timely submits a claim this shall not suspend its payment obligation. The Other Party shall in that case also be held to take receipt and pay the otherwise ordered goods and that which he assigned to Nomi.
3. If a defect is reported later than the Other Party shall no longer be entitled to repair, replacement or compensation.
4. Claims must be submitted to Nomi in writing, together with a clear and detailed description of the complaints and defects which have been found.
5. Proof of timely submission of a claim shall always rest with the Other Party.
6. Any failure in the performance of the agreement which has been noted by the Other Party, or any defects with regard to the goods and services which have been delivered, shall never entitle the Other Party to refuse or return any goods which have been processed by Nomi.
7. The Other Party is obliged to allow Nomi the opportunity to repair defects.
8. Claims due to damage or other directly observable losses must be noted on the waybill or consignment note, at the risk of all the Other Party's rights lapsing.
9. Action which the Other Party wishes to take against Nomi for whatever reason must be brought within no more than one year after the agreement, on the basis of which the action is being brought, was concluded, at the risk of all the Other Party's rights lapsing.

FORCE MAJEURE

Article 11.

1. In the event that circumstances occur beyond the control of Nomi, regardless of whether such circumstances were foreseeable or not at the time the agreement was concluded, which are of such a nature that Nomi cannot reasonably be required to comply with the agreement, Nomi is entitled to cancel all or part of the agreement, without being bound to pay any compensation.
2. If Nomi is unable permanently or temporarily to perform the agreement due to the failure to perform, be it attributable or otherwise, of one or more of its suppliers, then Nomi cannot reasonably be demanded to comply with the agreement and Nomi shall not be liable to pay any compensation whatsoever.

INTELLECTUAL PROPERTY AND INDEMNITY

Article 12.

1. The Other Party indemnifies Nomi against possible claims of third parties who incur damages in connection with the implementation of the agreement and of which the cause can be attributed to a party other than Nomi.

2. If intellectual property rights (including drawings, designs, specifications, etc.) are created in respect of goods delivered or made available to the Other Party by Nomi, without making use of goods made available to Nomi by the Other Party that are already subject to intellectual property rights, these intellectual property rights shall, regardless as to whether Nomi acted under the authority or on the instructions of or in accordance with the specifications of the Other Party, exclusively be vested in Nomi.
3. The Other Party shall fully indemnify Nomi and/or its employees against any and all claims of third parties, which claims shall also comprise those vis-à-vis non-subordinates of Nomi within the meaning of article 171 of Book 6 of the Dutch Civil Code, in connection with (an) allegation(s) that parts, materials, data, ideas, designs, know-how, methods or the used technique, experience or knowledge, which have been delivered by or with the knowledge and were used with the approval of the Other Party, infringe, abuse or use any intellectual property right of a third party.
4. The Other Party accepts and agrees that Nomi, should action be brought against Nomi and/or the Other Party in connection with the alleged infringement of the intellectual property rights of a third party, as outlined in this article, shall be free to choose its lawyer as also that the full lawyer's expenses on the part of Nomi shall be at the expense of the Other Party.
5. If so requested the Other Party is also held to (in association with Nomi) act in and out of court against third parties who claim that Nomi infringes intellectual property rights, the latter in relation to the assignment awarded to Nomi.
6. Should Nomi be addressed by third parties on this account then the Other Party is held to assist Nomi both in and out of court and to forthwith do all that which can in that case be expected of the same. Should the Other Party fail to take adequate measures Nomi shall, without any notice of default, be authorised to personally proceed accordingly. All costs and damages on the part of Nomi and third parties thus incurred shall fully be at the expense and risk of the Other Party.

APPLICABLE LAW

Article 13.

1. Any dispute arising from this agreement may only be submitted to the competent court in the district where Nomi has its registered office, even if a commitment is fully or partly implemented abroad or if the party involved in the legal relationship holds its domicile there. The applicability of the Vienna Sales Convention is excluded.
2. The court in the district where Nomi has its registered office is exclusively competent to take cognisance of disputes deriving from or connected with the agreement, unless the law mandatorily prescribes otherwise. Nomi shall nonetheless be entitled to submit the dispute to the competent court according to the law.
3. The parties shall only address the court after they have made every effort to solve the dispute amicably.
4. Nomi may continue to consider the address notified to it by the Other Party as the correct address unless the Other Party has notified Nomi in writing of a new address.

SOURCE AND CHANGE OF THE TERMS AND CONDITIONS

Article 14.

1. The lastly filed version and/or the version as applicable at the time of the conclusion of the legal relationship with Nomi shall at all times be applicable.
2. The Dutch text of these general terms and conditions shall at all times be decisive for the interpretation thereof.