

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

September 2022 version

Article 1 – Definitions

Capitalised terms used in this article shall have the following meanings in these General Terms and Conditions:

NOMI	NOMI Co-Packing B.V., having its registered office in Sint Willebrord and its principal place of business in (4879 NH Etten Leur) at Pauvreweg 46, registered in the trade register of the Chamber of Commerce under number 20067971, as well as the companies affiliated to NOMI or engaged by NOMI which refer to, or apply, these General Terms and Conditions.
Customer	Every company to which NOMI provides an offer/quotation and/or with which NOMI concludes an agreement or every company that places an Order with NOMI in the context of delivery of Products or provision of Services.
Products	The Products to be delivered by NOMI
Services	Activities that form part of the Agreement
Delivery	The Products or Services to be provided by NOMI
Quotation	A non-binding offer by NOMI to the Customer for the supply of Products, whether or not under the scope of a framework agreement.
Order	The Customer's order to NOMI for the delivery of Products, whether or not under the scope of a framework agreement.
Order Confirmation	The confirmation sent by NOMI to the Customer of the Order placed by the Customer
Agreement	A commitment between the Customer and NOMI whereby NOMI undertakes to supply Products and/or Services and the Customer undertakes to purchase the Products and/or Services to be supplied by NOMI.
Parties	NOMI and the Customer
Framework Agreement	The framework agreement concluded between the Parties in which the Parties have recorded in writing their (long-term) cooperation on the basis of which several Orders are placed within a specific period of time.
Terms and Conditions	These General Terms and Conditions of NOMI
In Writing	By letter or e-mail.

Article 2 – Applicability

- These Terms and Conditions apply to all - including future - Quotations, requests, offers, Orders, Agreements, deliveries and other obligations on the basis of which NOMI delivers Products and/or performs Services under any title whatsoever, insofar as not explicitly agreed otherwise in writing.
- If at any time the Customer refers to its own general (purchase) conditions, the applicability of these is hereby explicitly rejected. The Customer agrees to the applicability of these Terms and Conditions to subsequent Orders and agreements between the Parties.
- If any provision of these Terms and Conditions is at any time wholly or partially void or voided, the remaining provisions of these Terms and Conditions will remain fully enforceable. NOMI and the Customer will then enter into consultations in order to agree on new provisions to replace the void or voided provisions, which reflect as closely as possible the object and purport of the original provisions.
- If any uncertainty arises concerning the interpretation of one or more provisions of these Terms and Conditions, interpretation should take place 'in the spirit' of these provisions.
- If NOMI does not always require strict compliance with these Terms and Conditions, this does not mean that the provisions thereof are not applicable, or that NOMI would in any way lose the right to require strict compliance with the provisions of these Terms and Conditions in other cases.

Article 3 – Quotations and Orders

- All Quotations, requests or offers issued by NOMI as well as the prices included therein are without obligation and can be changed by NOMI, unless the Parties have agreed otherwise in writing.
- NOMI cannot be bound by its Quotations or offers if the Customer could reasonably understand that the Quotations or offers, or a part thereof, contain an obvious mistake or clerical error.
- All Quotations, offers and Order Confirmations are based on the information available to NOMI at the time they were issued. If changes occur with regard to the circumstances on which NOMI based its Quotation, offer or Order Confirmation, including price changes, NOMI is authorised to reflect these changes in the performance of the obligation/agreement, or to adjust prices, all this without prejudice to that which was determined in the previous paragraph. Quotations or offers do not automatically apply to future Orders.
- A price quotation does not obligate NOMI to perform part of the order at a corresponding part of the quoted price.
- NOMI has the right to refuse an Order or to accept the Order solely on condition that shipment takes place after payment in advance.
- NOMI is entitled to require the provision of additional security by the Customer regarding the fulfilment of its obligations.
- From the time of acceptance of the Order by NOMI by means of the Order Confirmation, the Customer can no longer cancel the Order, except with the written permission of NOMI.
- The Customer is obliged to inform NOMI in Writing about the machine settings used for the manufacturing of the Products to be delivered. If the Customer does not communicate any specific or concrete machine settings to NOMI, NOMI will assume that the machine settings customary for NOMI can be applied with regard to the Products to be delivered.

Article 4 – Representation

- Obligations and/or Agreements (including Framework Agreements) that have been entered into in the name of NOMI shall only be binding on NOMI if they have been entered into or confirmed by the director authorised to do so or by his or her representative authorised in writing, which confirmation must be explicitly made in writing.
- Only NOMI can invoke a defect regarding the power of representation referred to in paragraph 1.
- Offers by, or arrangements or agreements with, subsidiaries of NOMI are not binding on NOMI unless these offers, arrangements or agreements have been confirmed in writing by the authorised director or his/her authorised representative. Subsidiaries are taken to mean employees of NOMI who do not have sufficient power of attorney.

Article 5 – Amendments

- If the Order by the Customer deviates (whether or not on minor points) from that which has been offered in the Quotation or offer, NOMI is not bound by the Order. In that event, the Agreement is not concluded in accordance with this deviating acceptance, unless NOMI indicates otherwise in writing.
- Amendments to the Order, Order Confirmation or deviations from these Terms and Conditions shall only be effective if they have been explicitly agreed in Writing by the Parties.
- NOMI has the right to cancel an Order - even if it has already been accepted by sending an Order Confirmation - within 5 working days after the Order Confirmation, in which event no agreement is concluded between the Parties. In the event of cancellation, NOMI does not owe any compensation to the Customer.

Article 6 – Prices

- The agreed prices are exclusive of VAT. Unless otherwise agreed, prices are exclusive of any costs and duties, including but not limited to transport costs, costs of delivery and insurance, exchange rate risk, etc.
- NOMI is entitled to increase the agreed price if one or more of the following circumstances occur after conclusion of the Agreement: increases in exchange rates, increases in the costs of raw materials, materials, semi-finished products, excise duties or services which are necessary for the execution of the Agreement, increases in shipping costs, wages, employer's contributions, social insurance, the costs involved in other employment conditions, transport costs, the introduction of new and/or increase in existing government levies, or other circumstances which are such that according to criteria of reasonableness and fairness the Customer cannot expect the Agreement to be maintained unchanged.
- The Customer must pay the invoice amount within 30 days of invoicing, without any right to set-off or suspension. This payment obligation shall apply in full in the event that the Customer exercises its obligation to complain.
- If payment has not been made on the due date, the Customer will immediately be in default, without any further demand or notice of default by NOMI being required. If the Customer does not pay on time, the Customer shall owe NOMI a contractual interest of 10% on an annual basis, or - if this is higher - the statutory commercial interest as referred to Article 119a of Book 6 of the Dutch Civil Code (*Burgerlijk Wetboek*).
- Payments made by the Customer always serve firstly to pay any claims that NOMI has against the Customer and regarding which NOMI has not invoked retention of title, subsequently to pay all interest and costs due, and finally to pay the oldest outstanding invoices, all this even if the Customer states that the payment relates to a specific claim or invoice, unless agreed otherwise in Writing.

Article 7 - Supply of materials and/or raw materials to NOMI

- If, in the context of arrangements made by the Parties, the Customer is to deliver materials to NOMI, the Customer must deliver these materials to NOMI at the latest 48 hours before the production date as notified by NOMI to the Customer, unless the Parties have agreed otherwise.
- If the materials referred to in paragraph 1 of this article are not delivered to NOMI in a timely manner and/or the delivered materials are not complete and/or sound, the Customer will be liable for damage resulting from this, including, but not exclusively, damage as a result of already having engaged, scheduled or deployed workers, on-call workers and/or hired-in workers.

Article 8 - Delivery by NOMI

- Unless the Parties have explicitly agreed otherwise in Writing, all delivery periods of NOMI are indications only and therefore do not constitute strict deadlines.
- In the event of any deviation from the delivery periods or delivery date, NOMI will only be in default after the Customer has given NOMI written notice of default and has provided NOMI with the opportunity to deliver the Products and/or the Services within a reasonable period that is at least the same as the original delivery period, and NOMI fails to deliver upon expiry of this period.
- Unless the Parties agree otherwise in Writing, NOMI delivers ex works. Products to be delivered shall be at the expense and risk of the Customer from the time of delivery. The Customer is obliged to take delivery of the Products at the time at which they are made available or handed over.
- If the Customer refuses to take delivery, delays the delivery or provides insufficient or no information/instructions necessary for the delivery, NOMI is entitled to store the Products at the expense and risk of the Customer.
- If the Customer stores products, whether or not these products are (to be) delivered by NOMI, at NOMI's premises, the Customer is obliged at all times to insure these products properly. At NOMI's first request, the Customer will provide NOMI with proof of this insurance.
- NOMI is at all times entitled to charge storage costs to the Customer for storing products, whether or not these products are (to be) delivered by NOMI.
- NOMI is never liable for damage or reduction in value of products which NOMI stores for the Customer, whether or not these products are (to be) delivered by NOMI.

Article 9 – Complaints

- Complaints regarding damage or other directly observable losses must be recorded on the consignment note subject to forfeiture of all rights of the Customer. If no damage or other directly observable losses are recorded on the consignment note, it is thus established that no damage or other directly observable losses existed at the time of delivery.
- Complaints about invisible defects must be reported to NOMI in Writing immediately, in any case no later than 5 days after their discovery, subject to forfeiture of all rights of the Customer. The complaint should specify the defect in as much detail as possible, in order to enable NOMI to respond adequately. The Customer must give NOMI the opportunity to investigate a complaint or have it investigated.
- If the complaint is not received by NOMI within the period mentioned in the second paragraph of this article, the Customer is no longer entitled to repair, replacement, compensation or any other remedy.
- Proof of timely complaints shall always rest with the Customer.
- If the Customer discovers a failure in the performance of the Agreement or defects with regard to the performance delivered, this does not entitle the Customer at any time to refuse the items processed by NOMI or to return them.
- Any legal claim of the Customer against NOMI on whatever account must be instituted within six (6) months after conclusion of the Agreement from which that legal claim arose, subject to forfeiture of all rights.

Article 10 – Default

- If the Customer does not fulfil its obligations resulting from the Agreement, or does not fulfil them on time, or does not fulfil them properly, the Customer will immediately be in default without NOMI being obliged to give notice of default.
- If the Customer has failed to fulfil its obligations resulting from the Agreement, the Customer is liable for all damage of NOMI caused directly or indirectly as a result of this.
- Without prejudice to NOMI's right to demand fulfilment of the Agreement, to suspend further performance of the Agreement, or to terminate the Agreement, NOMI also has the right, as soon as the Customer is in default, to claim compensation on account of the damage suffered by NOMI as a result of the failure, which damage is estimated to be at least 30% of the value of the performance to be delivered by the Customer.
- By means of a written statement NOMI is entitled to immediately suspend the performance of all its obligations towards the Customer (thus also obligations which are not related to the obligation not fulfilled by the Customer), to demand provision of further adequate security, or to terminate the Order or Agreement wholly or partially with immediate effect, always retaining all its rights to compensation of costs and damage, if:
 - the Customer fails to fulfil one or more of its obligations or if it has been established that fulfilment without failure will be impossible;
 - the Customer is guilty of serious misconduct or commits an unlawful act;
 - the Customer causes damage to the interests or the reputation of NOMI;
 - the Customer offers or provides any benefit to an employee of NOMI in connection with the conclusion or performance of an Order or Agreement;
 - a petition for bankruptcy is filed against the Customer, the Customer has applied for a moratorium (provisional or otherwise), the Customer has started a procedure under the Dutch Court Approval of a Private Composition (Prevention of Insolvency) Act (*Wet homologatie onderhands akkoord (WHOA)*) or the Customer appears to be insolvent in any other way;
 - in the opinion of NOMI, drastic changes occur in the direct or indirect division of ownership or control structure of the Customer.
- If the Agreement has been terminated in accordance with the previous provisions, the Customer is not entitled to any compensation by NOMI as a result of that termination.
- If the Agreement is terminated due to a cause which is not attributable to NOMI, or is not for its account, NOMI is entitled to recover the damage incurred by it from the Customer, which damage will be set at at least 30% of the value of the performance to be delivered by the Customer.

Article 11 - Right of retention

- If the Customer does not fulfil any (payment) obligation, NOMI has the right to suspend all its obligations under the Agreement, as well as to postpone the delivery of the items which NOMI keeps for the Customer, until the debt is paid.
- NOMI can also invoke the right of retention referred to in paragraph 1 against third parties.
- The storage costs incurred by NOMI are at the expense of the Customer and must be paid before the items are handed over.

Article 12 - Collection

- If NOMI takes measures in order to collect debts due and payable by the Customer, all costs thereof, both judicial and extrajudicial, including but not limited to the costs of litigation and legal assistance, will be at the expense of the Customer.
- The extrajudicial costs referred to in paragraph 1 will be calculated on the basis of the graduated scale for extrajudicial collection costs (*BIK*) and the most recent *BKG-Integraal* report. However, if NOMI incurred higher collection costs that were reasonably necessary, the actual costs incurred will be eligible for reimbursement.
- If the Agreement has been concluded with two or more parties jointly, they shall each be severally liable for the fulfilment of the obligations arising from the Agreement.

Article 13 – Liability

- NOMI is only liable for direct damage which is the direct and immediate consequence of NOMI's imputable failure in the execution of the Order or Agreement and which has caused NOMI to be in default. Direct damage is exclusively understood to mean the reasonable costs which the Customer would have to incur to ensure that NOMI's performance is in conformity with the Agreement.
- NOMI is never liable for:
 - any form of indirect damage;
 - consequential damage, including but not limited to trading loss, missed savings, reduced goodwill, stagnation damage, damage to reputation, damage caused by the product supplied by the Customer to NOMI and loss of profit;
 - damage caused by auxiliary persons that have been engaged by NOMI or by third parties, even in the event of intent or gross negligence;
 - damage caused by employees of NOMI who are seconded to the Customer;
 - damage that the Customer suffers due to claims from third parties.
- damage of whatever nature that has occurred because incorrect and/or incomplete data provided by or on behalf of the Customer were used as a basis by NOMI.
- damage caused by machine settings, where no specific or concrete settings were communicated to NOMI by the Customer.
- The total liability of NOMI on account of an imputable failure to perform the Order, Agreement, a wrongful act and/or any other basis whatsoever shall be limited to a maximum of the invoice value of the Order, or at least to that part of the Order to which the liability relates. The total compensation for damage shall never amount to more than the amount paid out by NOMI's liability insurance in the relevant case.
- If a defect in a Product supplied by NOMI came about as a result of, or arising from, injudicious or improper use of the Product, use of the Product after the best-before date or incorrect storage by the Customer and/or by third parties, if the Customer or third parties made changes or tried to make changes to the Product without NOMI's written permission, if other items were attached to it which should not have been attached to it, or in the event of processing or treatment in a way other than in the prescribed manner, then NOMI is not liable for this.
- NOMI is not liable if a defect has arisen due to or as a result of circumstances on which NOMI has no influence, including but not limited to the content of the Customer's product supplied by the Customer to NOMI and the influence of weather conditions on the Product (including, but not limited to, extreme rainfall or temperatures) etc.
- The Customer is obliged to examine, or cause to be examined, that which has been delivered immediately at the time when the Products are made available to the Customer or the relevant work is performed, respectively. In doing so, the Customer must examine whether the quality and/or quantity of that which has been delivered corresponds to what was agreed upon and meets the requirements that the Parties agreed upon in this respect.
- The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence on the part of NOMI.

Article 14 – Force majeure

- Without prejudice to the provisions of Article 75 of Book 6 of the Dutch Civil Code, force majeure is taken to mean any circumstance which prevents NOMI from fulfilling its obligations pursuant to the Order or Agreement (including but not limited to weather conditions, government measures, fire, accidents, labour unrest, stagnation in the regular course of business in the company of NOMI and the partial non-fulfilment, on any grounds whatsoever, of third parties and suppliers engaged by either the Customer or NOMI, war or consequences thereof, consequences of pandemics as well as the consequences of government measures imposed as a result, etc.) and which cannot reasonably be attributed to NOMI.
- If NOMI is prevented from fulfilling the Order or the Agreement due to force majeure, it shall be entitled, without any obligation to pay compensation and without prejudice to its further rights, to suspend the fulfilment of the Order or Agreement during the period of force majeure, or to cancel or terminate the Order or Agreement by means of a written notification. In the event of full or partial cancellation of the Order or termination of the Agreement or delay in the delivery as understood in the Order or Agreement, NOMI is not obliged to pay any compensation.
- If upon the occurrence of force majeure NOMI has already partially fulfilled its obligations, or can only partially fulfil its obligations as a result, NOMI has the right to separately invoice the part of the Order or Agreement already performed or still to be performed, whereby the work performed/still to be performed will be charged as if it were work performed on the basis of a separate Order or Agreement.

Article 15 – Indemnification

- The Customer indemnifies NOMI against all claims of third parties with regard to the Product delivered by NOMI, in the event that the cause of the claims is attributable to a party other than NOMI.

Article 16 - Intellectual Property

- If trademark rights, design rights, copyrights, domain rights or other intellectual property rights are vested in the Products and Services provided to the Customer, these rights belong exclusively to NOMI even if the Products were designed, developed or produced specifically for the Customer, unless:
 - these rights are owned by a third party;
 - it has been expressly determined in writing in advance that rights belong to the Customer, specifying which rights.
- The Customer fully indemnifies NOMI and/or its employees against any claim by third parties, also including claims against non-subordinates of NOMI as meant in Article 171, Book 6 of the Dutch Civil Code, in connection with claim(s) that parts, materials, data, ideas, designs, know-how, working methods or the used technique, experience or knowledge, which were delivered by or used with the knowledge and approval of the Customer, infringe on or make use of any intellectual or other property right of a third party.
- If the Customer is involved in any claim instituted by a third party with regard to the intellectual property rights of NOMI, or if this threatens to happen, the Customer will:
 - immediately, and in any case no later than 7 days after the day on which the Customer became aware of the claim or imminent claim, notify NOMI in writing, explaining in detail the nature of the claim or imminent claim, including, without being exhaustive, copies of all relevant correspondence received by the Customer;
 - take such action as NOMI may reasonably request in writing to prevent, dispute, oppose and defend against the claim or imminent claim;
 - not agree to, or accept, any compromise or settlement, or admit or pay any liability in respect of the claim or imminent claim without the prior written consent of NOMI and
 - notwithstanding the foregoing, after a written notification from NOMI, grant NOMI the exclusive power at the expense of the Customer to prevent, dispute, oppose and/or defend against the claim or imminent claim. NOMI remains at all times authorised to delegate the handling of such cases to a lawyer or attorney appointed by it and the Customer shall provide all information and cooperation requested by NOMI.
- If legal proceedings are instituted against NOMI in connection with an alleged infringement of the intellectual property rights of the Customer or a third party, the Customer accepts and agrees that NOMI is entitled to choose its own lawyer and that the full legal costs, including lawyer's fees on the part of NOMI, will be at the expense of the Customer.
- Furthermore, if requested, the Customer is obliged (together with NOMI) to act in and out of court against third parties who claim that NOMI infringes the intellectual property rights of the third party, with regard to the order granted to NOMI.
- If NOMI is held liable on that account by third parties, the Customer is obliged to assist NOMI both in and out of court and to immediately do everything that NOMI may expect of the Customer in that event. If the Customer fails to take adequate measures, NOMI will be entitled to do so, without any notice of default. All costs and damage on the part of NOMI and third parties caused by this are fully at the expense and risk of the Customer.

Article 17 - Confidential information

- The Parties shall use all information received from each other exclusively for the execution of the Order and/or Agreement. Such information shall remain the property of the Party that supplied it and, insofar in written form, shall be returned to it, together with any copies made of it, at the request of that Party.
- The Parties are obliged to keep confidential all information and data that have become known during the placing of the Order and/or during the execution of the Agreement, subject to legal obligations to disclose and/or except insofar as such information and data is already publicly available. Information that is disclosed on the basis of a legal obligation is exempted, on the understanding that the party on whom that obligation is imposed by law informs the other party in good time of the imminent information obligation and disclosure with a clear description of the subject matter so that the other party, whose information is to be disclosed, has sufficient time to submit a request through the courts to counteract this. The burden of proof of the defence that the information was already public and did not become public through the fault of the other party lies with the party invoking the aforementioned defence.
- Without the explicit permission of NOMI, the Customer is prohibited from using the trade names, trademarks or Products of NOMI, whether or not for reference or advertising purposes.
- This provision shall continue to apply even after termination of an Agreement or Order of which these Terms and Conditions form part.

Article 18 – Amendment to the Terms and Conditions

- The most recently filed version of the Terms and Conditions or the version that applied at the time when the legal relationship with NOMI was established is always applicable.
- The Dutch text of the Terms and Conditions is at all times decisive for the interpretation thereof.

Article 19 - Final clause

- All legal relationships between NOMI and the Customer to which these Terms and Conditions apply as well as all legal relationships resulting therefrom are exclusively governed by Dutch law, with the exclusion of the application of the United Nations Convention on Contracts for the International Sale of Goods.
- NOMI and the Customer undertake to settle any disputes which may arise between them, including those disputes that are only considered as such by one of them, in the first place by means of proper consultation. If one Party or both Parties declare that such consultations have failed, or if consultations are pointless under the circumstances of the case, either Party shall have the right to submit the dispute to the court. All disputes arising from this Agreement can only be brought before the competent court in the district where NOMI has its registered office, even if an obligation is wholly or partially fulfilled abroad or if the Party involved in the legal relationship has its place of residence abroad.