

## General Terms and Conditions – Innight Express Germany

### 1. General Provisions / ADSp

Unless otherwise regulated by the following General Terms and Conditions Innight Express Germany GmbH (hereinafter referred to as NOX) offers its services on the basis of the German Freight Forwarders' Standard Terms and Conditions (ADSp) in their latest version. Insofar as these General Terms differ from the regulations of the ADSp the former take precedence.

### 2. General Obligations of the Client

- (1) The client has to package the goods to be transported in a suitable way for handling and truck transport.
- (2) Unless otherwise agreed at least in the text form the loading process is carried out by the client, the unloading process by NOX or its commissioned freight carrier / driver.
- (3) The client has to transmit the data required for the transport on time by means of KÜDÜ. If data has not been submitted punctually NOX may refuse to perform the transport. Incidentally no. 6 (6) applies.
- (4) Each consignment has to be accompanied by a shipping documentation coordinated with and authorized or provided by NOX. This includes the placing of barcodes provided by NOX or at least readable for the carrier / driver. A good without or with an unreadable barcode label will not be transported. NOX may remove it from the process of transport and return it to the client at his expense and risk unless it is possible for NOX or the carrier to label the consignment / package due to unambiguous transport data received otherwise. The resulting additional costs are at the expense of the client. If NOX carries out the transport despite the lack of readable barcodes the agreed delivery deadline will not apply.
- (5) If the client requires a confirmation of receipt for VAT reasons NOX may submit it electronically.
- (6) Cancellation of the order by the client according to § 415 HGB (Handelsgesetzbuch: German Commercial Code) after handover of the consignment to NOX or its freight carrier / driver must, at the latest, be declared in the written form to NOX by 17.00 hours on the day of collection.
- (7) Single pieces with a gross weight of more than 100 kilograms or with dimensions exceeding 3.2 metres (length), 1.2 metres width or 1.5 metres height have to be announced by telefax, or eMail together with a heavy cargo notice (which can be obtained from NOX business places) by 12.00 of the collection day. Promises regarding the runtime do not apply for such single pieces. NOX is entitled to charge a surcharge of the actual additional costs incurred or to refuse the transport of such goods and send them back to the consignor at his expense without further notice. If such pieces are accepted for transport nevertheless the period of transport is suspended. In case of pieces with a gross weight exceeding 100 kilograms the client has to provide the necessary technical aids for unloading at the place of delivery.

### 3. Delivery

- (1) Delivery per overnight express is normally carried out, after collection, on the next working day (Tuesday-Saturday) by 8:00 hours at the latest and, unless otherwise agreed, in the absence of the consignee. Delivery on holidays requires a special explicit agreement and is only possible if the consignment was collected from the consignor between Monday and Friday. Such special agreements require the written form and cannot be taken for holidays on Sundays. In the case of days that are holidays in some federal states of Germany only, delivery of goods of overnight express is carried out in the night before the holiday if the recipient's premises are located in the holiday state. NOX leaves the transported goods at a place specified by the client in the written form at least. If the depot is not sufficiently theft-proof or inaccessible or if it does not exist at all, delivery is affected by leaving the consignment at another place specified by the client in the written form at least (specification of delivery point). In the absence of an appropriate specification NOX is entitled, due to the urgency of the order, to leave the consignment at the consignee's premises. Only if an extreme danger of loss is obviously more important than the urgency of the order or if the agreement between NOX and the client requires to do so in such a case NOX will not carry out the delivery. The client is obliged to ensure that the consignee provides a depot for delivery or transmits a specification of delivery point in the written form to NOX. In addition to that the client is obliged to point out to the consignee that in the absence of a depot and of a specification of delivery point the consignment may be unloaded at his premises. The increased risk of loss due to the lack of an appropriate depot lies with the client who will also be charged with the costs of a necessary return shipment of the consignment to the nearest NOX subsidiary or to the consignor, in case of an obvious danger of loss. NOX does not bear liability for damages resulting from late delivery due to a return shipment necessary because of the lack of an appropriate depot.

Delivery points, depots or other locations remain places of delivery as long as the client has not instructed NOX otherwise in the written form. At the moment the consignment/the goods have been unloaded in the depot, the specified location or the other place delivery will be deemed to have been affected.

NOX may prove the delivery by means of an electronic delivery record (scanning) or of accompanying documents by the freight carrier / driver or by means of a manual entry into the system of consignment tracking which is possible if and insofar as the delivery was acknowledged by the freight carrier / driver by telephone. When required by the client NOX will provide a copy of the authorized proof of delivery by means of eMail or telefax. For a proof of delivery in hard copy the client will be charged EUR 12.80 (net) per proof.

- (2) Delivery in day express between 8:00 and 12:00 hours is carried out in absolutely exceptional cases only. Further details require an individual agreement.
- (3) Delivery hours other than the regular ones require a prior written arrangement. For the delivery of consignments to the North Sea islands and the Baltic islands not linked to the mainland by a bridge NOX will charge a surcharge of EUR 1.50 (net) per kilogram, but of at least EUR 15.00 per consignment. Promises regarding the runtime will not apply in such cases.

### 4. Goods Excluded from Transport

- (1) NOX will not accept orders to transport the following goods:  
precious metals, jewellery, precious stones, money, coins, securities and bonds, antiques, art objects, stamps or other tokens, unique items and other exceptionally valuable objects, tender documents, live animals and plants, perishable goods, temperature-sensitive goods (unless otherwise agreed upon individually), mortal remains; consignments that are subject to the monopoly of transportation of the postal services; consignments with their content, outer appearance, transport or storage violating legal or administrative prohibitions or requiring special devices, security measures or authorizations; international shipments by air with a content excluded from transportation by the ICAO (International Air Transport Association), by a competent authority or other organizations. NOX will also exclude from transportation fireworks, ammunition and other similar objects.

As far as the exclusion of dangerous objects is concerned no. 5 applies.

- (2) The client is liable for all damage incurred to NOX in consequence of handing over goods excluded from transport according to no (1) to NOX or its freight carrier / driver, unless NOX or the carrier / driver knew or should have known that they were being handed over such goods / consignments.
- (3) Insofar as NOX is handed over excluded goods without prior notice its liability is excluded, unless NOX knew or could and should have known that it was shipping prohibited goods according to no. 7.

### 5. Dangerous Goods

- (1) The transport of „dangerous goods“ according to national or international dangerous goods regulations (e. g. ADR) is only allowed in accordance with the quantities permitted in these provisions and after prior agreement with NOX. Further information and indications as regards the transport of such goods can be found in the relevant manual on the internet [www.NOX-nachtexpress.de](http://www.NOX-nachtexpress.de) or provided by your NOX subsidiary on request. No contract on the transport of dangerous goods shall have been concluded if the client does not declare the consignment as „dangerous goods“ in accordance with the relevant national and international provisions.
- (2) The consignor is obliged to comply with the current ADR-provisions on packaging, to prepare an ADR-document (see NOX -declaration of dangerous goods, [www.nox-nachtexpress.de](http://www.nox-nachtexpress.de)) and to notify the consignment. The client has to ensure a separate handover of the dangerous package together with the relevant documents to NOX or the charged freight carrier / driver. For limited quantities transport documents are not required, but the package and the information on its dangerous nature must be made available to NOX or to the freight carrier / driver.
- (3) NOX will not accept consignments with a content classified as „dangerous goods“ by the ICAO, by the IATA or by the competent authority.
- (4) For the transport of dangerous goods NOX does not take over any guarantee as regards the term of transport, any time limit agreed on being suspended in such cases. For dangerous goods the provision of a lockable depot is absolutely essential. In the absence of such a depot the good will be returned to the NOX subsidiary and stored at the expense of the client until another attempt of delivery subject to an additional charge.

### 6. Tariffs and Terms of Payment

- (1) For each service the tariffs and prices in the current price lists of NOX apply, rates being added by toll fees, fuel surcharges (DKZ), surcharges for increased liability for property damage (ITLL) and VAT. The calculation of the remuneration will be based on the tariffs and prices valid at the day of placing the order. The client will receive the tariff documentation from NOX on request. If the invoiced amount is influenced by the weight of the consignment the weight of the single packages will be rounded up to full kilograms.

- (2) In principle NOX carries out free-house shipments. „Freight-collect“ delivery has to be explicitly stated on the order placed to NOX. Nox is entitled but not obliged to collect the remuneration from the consignee, the client remaining obliged to pay remuneration agreed with NOX in any case.

- (3) Unless agreed otherwise for cash on delivery client has to pay a fee of 2% of the corresponding value at least a minimum of 24,00 € per shipment.
- (4) Unless agreed otherwise the invoiced amount is due immediately and without any deduction in the currency indicated in the invoice. The client is in default even without a reminder unless he pays the complete invoiced amount within 14 days after receipt of the invoice. As long as the client is in arrears NOX may refuse further services even if consignments have already been accepted by that time. In the case of a reminder NOX will charge a fee of EUR 5.00.
- (5) If a new invoice is required due to false specifications made in the order or due to the consignee's refusal to pay for a consignment not to be delivered free-house NOX will charge a fee of EUR 17.80. If addition of transport orders / documents to the invoice is desired by the client the additional charge will be EUR 1.00 per attachment.
- (6) In case that against no. 2 (3) the purchaser transmits shipment data incorrect, not in time, not at all and/or not completely electronically, he will be charged with a fee of 2,00€ per barcode/colle. Are the data not complete and correct within 3 days after start of the shipping, an additional fee of 150,-€ per working day will be charged, until final clarification
- (7) Unless and insofar as not otherwise agreed by NOX and the client the following provision applies for continuing obligations: In case of increases in transport costs due to the implementation or increase of costs that are part of the freight, and directly imposed by legislation (taxes excluding VAT, fees (particularly toll fees), fuel costs and labour costs (particularly due to changes in collective wage agreements) NOX is entitled to charge the client with such increases, after notice, from the time they get effective. This does not apply if these increases lead to an overall increase in the costs of transport for NOX of less than 1% or of less than 3% regarding the relevant cost item compared with the costs at the time of the conclusion of the contract. The client is not entitled to demand disclosure of the calculation. In the case of the client's objection to the increase in the written form and in the absence of an agreement between NOX and the client within 6 weeks after receipt of this objection either party is entitled to terminate the agreement or the cooperation giving two months' notice to the end of the month.

### 7. Liability / Notice of Damage

- (1) NOX explicitly points out to the fact that in accordance with these General Terms and Conditions, with the ADSp and with legal provisions its liability for damage to goods and damage due to late delivery is limited. Therefore the client is advised to get appropriate insurance of transport.
- (2) Insofar as the Warsaw Convention, the Montreal Convention or the CMR are applicable the regulations and limitations of liability of these conventions take precedence.
- (3) In the absence of mandatory legal provisions, particularly as regards the national freight transport NOX bears liability according to the following provisions:  
By way of derogation from the German Commercial Code (HGB) and the provisions of the ADSp the liability of NOX for damage to goods is limited to 2 SDRs (Special Drawing Rights) per damaged or lost kilogram of goods. The liability for warehousing upon instruction is limited to EUR 5.00 per kilogram for damage and EUR 5000.00 for loss per claim. Inventory discrepancies are settled by balancing shortages and surpluses. The aforementioned limitations of liability do not apply if the damage was caused by an intentional or reckless action or omission of NOX, its legal representatives or agents in the awareness that the damage would probably result.
- (4) If NOX receives a key or any other device to facilitate access to a secured depot to allow delivery the liability for the loss of the key is limited to EUR 250.00 per device. This limitation does not apply to damages caused by intentional or reckless action or omission in accordance with § 435 German Commercial Code (HGB).
- (5) All damage occurred during overnight express must be reported in writing by the client or the consignee, including a detailed specification of the damage, at the latest, by 12.00 hrs. on the day of delivery. If this a Saturday, Sunday or official holiday the report must be submitted in writing no later than by 12 hrs. on the next business day. Damage occurred during day express must be reported by 16.00 hrs. on the day of delivery general reservations being insufficient. If no notification of claim has been submitted within the aforementioned period liability claims against NOX are excluded. In addition to that liability for the reported damages requires the original packaging and the consignment being kept ready for inspection and return by NOX or its authorized representative.

### 8. Inspection of the Consignments / Right of Inspection / Information on Transported Goods and Loading Devices

- (1) Unless prohibited by law NOX reserves the right, but is not obliged, to open and inspect or scan by means of X-ray consignments tendered to it for transportation. Even in case of appropriate execution X-ray may cause damage to radiosensitive goods without NOX bearing liability for such damages. Particularly if there are reasonable doubts about the value of the goods indicated by the client in the case of the freight cost being based on the value of the consignment NOX is entitled to open and inspect the consignment.
- (2) The actual weight per consignment has to be indicated in kilograms. In the case of lacking or false indication of weight NOX is entitled to weigh the consignment. If the account was agreed to be based on the weight of the goods transported NOX has the right to base it on the results of its own weighing, the burden of proof of the claim that this might have been inaccurate lying with the client. If the weight NOX has determined differs to such an extent that this will justify a higher price of the shipment NOX is entitled to charge a fee for expense of EUR 40.00 per package in addition to the adapted rates. In the case of repeated price-relevant weight divergences in continuing obligations with the same client NOX is entitled to invite the client to ensure correct weight specification setting him an adequate time limit. If the client fails to comply with this request appropriately NOX may terminate the contract extraordinarily. These regulations apply accordingly if the weight of the consignment is not indicated at all (e. g. due to a lack of data transmission). Insofar as NOX carries out the transport nevertheless without weighing the consignment the price of the service will be based on a notional weight of 35 kilograms.
- (3) Consignments with their volume weight exceeding that of their gross weight may be billed based on the former, the volume weight being calculated on the basis of 1 cbm = 150 kilograms. No. 7 (2) applies accordingly.
- (4) Unless otherwise agreed in writing transport and packaging devices are neither provided nor exchanged or returned by NOX. In particular the exchange of pallets and transport boxes is impossible unless the parties have otherwise agreed individually in the written form.

### 9. Data Protection

Nox is entitled to collect, store and process data of the client, his consignee and of their vicarious agents until written revocation. If necessary data may also be forwarded to the persons involved. This applies to data related to the services offered by NOX or which are a precondition for a proper service of NOX and the charged freight carrier / driver.

### 10. Form

Agreements differing from these General Terms and Conditions require the written form. This also applies to amendments of this written form clause.

### 11. Severability Clause

Should any clause of these General Terms and Conditions have no or lose its legal force the validity of the remaining clauses is not affected. In such a case the invalid clause has to be interpreted, completed or replaced in a way that allows the realization of its economic purpose in the best possible way.

### 12. Final provisions

- (1) Claims as well as possible seizures of claims against NOX cannot be assigned by the client without prior written consent.
- (2) Invoiced amounts may only be set off against counterclaims which have been established as final and absolute or which NOX has acknowledged. This also applies to the assertion of retention rights.
- (3) Unless otherwise agreed the place of performance in terms of the law is defined by the place of the NOX subsidiary where the order was submitted.
- (4) German law shall apply.
- (5) For disputes Cologne is the exclusive place of jurisdiction unless stipulated otherwise by mandatory legal provisions.
- (6) These General Terms and Conditions of NOX can also be found on the internet under [www.nox-nachtexpress.de/agbl](http://www.nox-nachtexpress.de/agbl).

Status as of January 2018.