

# GENERAL TERMS AND CONDITIONS

## nox NachtExpress Austria GmbH

### Preamble

The general Terms and Conditions (referred to hereafter as "GTC") apply to all contracts between nox NachtExpress Austria GmbH (referred to hereafter as "NOX") and their customers regarding the forwarding, transport, handling and/or storage of goods. Upon request, the Terms and Conditions of NOX, the AÖSp and the insurance conditions for transport insurance (see point VIII) can be made available to the customer free of charge; the Terms and Conditions can also be accessed through the homepage ([www.nox-nachtexpress.at](http://www.nox-nachtexpress.at)) for viewing and download.

Contrary General Terms and Conditions of the customer are not accepted, and applicability thereof is hereby expressly denied.

### I. General

1. The GTC of NOX are applicable to all contracts of any sort made with NOX, especially to shipping, freight and storage contracts. Unless otherwise specified in the GTC, the laws of the General Austrian Forwarder's Terms (AÖSp) as it stands at the time of the contract's signing, with the exception of the paragraphs 33, 39-41 AÖSp.

These GTC also apply to future contracts, even without express repeated notification of their applicability. Agreements not in accordance with these GTC are not valid without express written confirmation from NOX..

2. Some differing or supplemental conditions may apply to special logistical services.
3. The forwarding performance of NOX normally includes the organization of the forwarding by freight drivers, the relaying of the envelope and the pickup and delivery of shipments. The type, means, and path of forwarding are decided by NOX at its own discretion with the care of a professional enterprise.
4. No driver is authorized to accept or deliver legally relevant documents.

### II. Transport Procedure and Delivery

The vehicles used for delivery and pickup are occupied by a single driver and generally are not equipped with a tail lift. Pickups are carried out either regularly or upon request based on an appropriate arrangement.

The delivery of shipments rendered according to previous agreement to NOX between Monday and Friday generally proceeds as follows, according to the current service spectrum:

- a) by night express by 8:00 AM of the next working day (Tuesday - Saturday)
- b) ) by day express in urban areas between 8:00 AM and 12:00 PM, in all other postal code areas between 8:00 AM and 5:00 PM on the working day immediately following pickup (Monday - Friday). The listing of the TEX 12:00 postal code areas can be requested at [info@nox-nachtexpress.at](mailto:info@nox-nachtexpress.at).

The consignor agrees that NOX delivers the merchandise as follows:

1. NightExpress
  - a) The delivery of the consignments impersonally (without receipt of transfer) according to the drop location agreement;
  - b) The consignor is responsible for providing and designating a theft-proof drop location which cannot be accessed by a third party. Any necessary keys shall be made available at no cost to NOX. If arranged by written agreement, NOX can, with appropriate compensation, provide a lockable depot at a location to be agreed upon.
  - c) If no theft-proof drop point inaccessible to a third party is made available to NOX by the consignor, the delivery will be placed at another location to be designated in writing by the consignor. If such a location is also not designated, the driver hired by NOX is authorized to deliver the consignment to the recipient at his own discretion or to abandon delivery to the recipient. The consignor bears any heightened risk of loss and damages resulting from the failure of the consignor to designate a drop point or a theft-proof drop point;
  - d) Any packages which cannot be unloaded by one person, due to their size or other properties, are delivered by day express.
2. DayExpress
  - a) Delivery is carried out behind the first locked door, to any person belonging to the household or business and who is present on the premises, upon receipt of his / her signature. The delivery confirmation can be registered in writing and / or electronically (with a scanner).
  - b) Delivery receipts (consignment note copies or digital file of the electronic signature) are made available on demand for a fee.

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### III. Goods Excluded from Shipment

Goods or materials whose forwarding or storage is forbidden by the laws or regulations in any country on the route of the consignment are excluded from forwarding services, including forwarding and storage. Additional to and independent of these exclusions, is the exclusion of all types of weapons or parts thereof, ammunition and war supplies, radioactive material, corpses, drugs and pornographic material.

Furthermore, NOX will not accept any of the following items, regardless of their value: coins, bank notes, stamps, negotiable instruments, credit cards and checks, loose gemstones, industrial diamonds, loose precious metals, artwork, antiquities, bidding documents, unique copies or forgeries. Goods prone to rapid spoiling or rotting and goods whose value exceeds EUR 50,000 are also excluded from these services.

Only after special written agreement are goods accepted whose transport require special installations or which, due to their composition or packaging might endanger or inhibit other goods, persons, or dispatch/transport facilities, as well as dangerous goods according to the law regarding the road transport of dangerous goods or comparable regulations, especially according to the "ADR" (European Treaty on the International Road Transport of Dangerous Goods).

Should NOX receive (a) goods which are excluded from transport, or (b) goods which are only accepted after previous written agreement, without having received said agreement, or (c) dangerous goods without the designation and documentation required by law, the client is held responsible, independent of negligence, for any resulting damages to NOX or other persons, including fines, forfeits, etc. as well as for any related expenditures, including processing or representation costs. NOX is expressly free of liability in such cases.

NOX reserves the right to open and check any packet it receives for transport, insofar as this is neither forbidden by law nor expressly excluded in a previous written agreement with the client. Such checks may result in delays in delivery, in which case the applicable deadlines are extended by the same duration..

### IV. Size and Weight Restrictions

Single packages whose weight exceed 50 kg or whose dimensions exceed a length of 3.2 m, a width of 1.2 m, or a height of 1.5 m, are only transported after consultation or under a special agreement. When these conditions are not met, NOX reserves the right to deny transport of the parcel and to return it without additional notice to the client at the client's own expense and risk. Should such an item nevertheless be accepted for transport, the transport deadline is void. For parcels with a gross weight of more than 50 kg, the client is responsible for arranging for the necessary equipment to aid with unloading at the place of delivery, at his/her own expense and risk

### V. Composition of Transported Goods

#### 1. Physical composition

- a. The transported good is to be made available to NOX in a suitable state for the transport of collective consignment.
- b. It must be packaged safely for transport, especially so that it can neither be damaged by the normal stresses associated with transport and processing, nor endanger other stored/transported goods or transportation/loading equipment.
- c. In case of non-transport-safe or inappropriately packaged goods, any damages are presumed to result from these faults.
- d. NOX is only held liable in such cases to the extent that it can be proved by the claimant that NOX negligently caused the damage. Regardless, NOX can refuse to accept insufficiently packaged or labeled goods, as well as unregistered oversize packages, if transport cannot be ensured without the endangerment of persons or other packages. No examination of the packaging is required.

#### 2. Parcel data

- a) Each package is to be outfitted by the client with clear, durable and unambiguously recognizable labeling as to the sender, consignee, and if necessary with symbols regarding the handling. Any old labels are to be removed.
- b) Each package is also to be outfitted with transport documentation provided by and/or inspected and approved by NOX. This includes the application of a barcode provided or approved by NOX, as well as the communication of the unambiguous barcode number in the data provided to NOX by the client
- c) Transport goods which do not fulfill the conditions above (a and b), can be separated from the transport process and returned to the client at his/her own risk and expense, unless NOX or the forwarding agent can label the package/the consignment using clearly recognizable, otherwise accessed forwarding information. Any costs arising from this process are to be paid by the client, who is also financially responsible for any damages resulting from insufficient labeling or transport documentation, regardless of negligence. Additionally, in such a case the delivery deadline is void.

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d) The client is to provide the necessary information for the transport in a timely fashion (e.g. through telecommunication channels). If the information is not available in time for delivery, NOX may exclude a shipment from delivery; in any case, any additional costs incurred in this way are to be paid by the client.

### 3. Barcode

For packages which are not labeled with an NOX standard barcode, or with a barcode agreed upon by NOX and the client, and whose identification numbers are not included in the data provided to NOX, no delivery deadline is applicable. The client is required to assume the costs for the application of a barcode. In addition, only limited Track & Trace information can be communicated for the tracking of the shipment in this case.

## VI. Guarantee of the client

The client guarantees that

- a) all information communicated by the client or his/her representatives is complete and accurate,
- b) the consignment was prepared by employees of the client in a secure area,
- c) the client has employed only trustworthy personnel for the preparation of the consignment,
- d) the client has protected the consignment against unauthorized tampering during its preparation, storage and transport to NOX,
- e) the consignment is sufficiently labeled, addressed, packaged and stowed, in order to ensure secure transport and processing under customary circumstances, and
- f) any applicable regulations concerning customs, import, export, or other regulations have been followed.

## VII. Payment and Billing

1. Unless otherwise stipulated in a written agreement, payment is to be completed for each item according to each record of delivery (electronic or by cargo list). The basis of the payment is the applicable price list from NOX or the individual fee agreed upon with the customer. Weights are rounded up to the nearest full kilogram.
2. Payment normally takes place on a weekly basis; invoices are due for payment in full within 14 days of the invoice date. In case of delay, the legally applicable interest is to be paid, which is to be no less than the current 3 month EURIBORS + 5%.
3. NOX has the right to charge a late fee upon issuance of a second reminder of payment. Additionally, the contract partner is responsible for refunding any fees incurred through engagement of a debt collection agency or attorney.
4. Fuel, tolls and other extra charges are calculated separately from and in addition to the arranged prices. Unexpected increases in costs lying outside of the influence of NOX (e.g. increased fuel prices, changes in regulations, toll increases, etc.) are added to the price after prior notice. There is no obligation to disclose cost calculations.

## VIII. Transport insurance

1. Each consignment is covered by a transport insurance against loss or damages, up to the net purchase price of the good but not exceeding EUR 1,600. For fragile or unpacked consignments (e.g. glass, auto body parts) the maximum liability is EUR 70 per consignment. Special provisions apply to returns (see Sec. IX, part 4).
2. In case additional insurance is desired, this can be arranged by NOX upon written request, in exchange for an additional fee corresponding to the value of the consignment as provided on the forwarding receipt. Consignments with a net value of more than EUR 10,000 are to be specially labeled and are automatically insured at the higher rate valid at the time of shipment, unless explicitly precluded by the client.
3. This transport insurance exists only for the benefit of the contract partners of NOX. Insurance claims can therefore not be relinquished and are not transferable to other persons such as according to Par. 67 VersVG.
4. Consignments covered by other insurance are excluded from the transport insurance coverage.

## IX. Liability

1. Unless otherwise stipulated below, the conditions of the AÖSP govern the liability of NOX (with the exception of the paragraphs 39-41 AÖSP).
2. Any liability of NOX for damages, costs incurred or other collateral damages, including liability for lost profit, especially in cases of delayed or improperly executed delivery at the final customer, is hereby waived.
3. If damage to a good was not externally recognizable, the client must prove that the damage was caused by NOX. This also applies in cases in which NOX was not provided with a theft-proof depository which is not accessible to third parties for night express shipments.

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4. In cases of pickup of returned goods, NOX is only liable for the total loss of the package at its listed value, up to EUR 700, since the state of the returned good is not discernible to NOX upon acceptance of the returned good.

### X. Reporting claims/statute of limitations

1. All damages must be reported to NOX (in the form of a damage report) immediately and in writing (also by fax or email with verified signature). In case of outwardly recognizable damages, the consignee of day express shipments must make a clearly visible note on the delivery paper no later than at the time of delivery. Additionally, a claim must follow no later than at 12:00 PM on the working day immediately following delivery. For night express shipments, the damage claim must follow no later than 12:00 PM on the working day following pickup.
2. Damages which were not outwardly ascertainable at the time of delivery must be reported in writing to NOX no later than on the sixth day following delivery.
3. In case conditions (1) and (2) are not met, the damages are assumed to have occurred after delivery.
4. The damage report is to be made using the NOX damage form (available on the homepage [www.nox-nachtexpress.at](http://www.nox-nachtexpress.at)) and must include the precise source of damages, the estimated amount of damage incurred, and a photo. General protests are insufficient.
5. The damaged good is to be kept for inspection by NOX or the insurer.
6. In case of a regulation of damages, NOX has the absolute right to recover the damaged good.
7. All claims against NOX, regardless of legal basis, are subject to a statute of limitations of six months. The time period begins with the acknowledgement of the claim by the claimant, or at the latest upon delivery of the good, or in case of complete loss on the planned delivery date.
8. Invoices for damages without repair services are to exclude value added tax.
9. Primary costs are to be deducted from damages to be paid.

### XI. Final Provisions

Regarding claims from NOX, the offset of counter-claims and/or the assertion of the right of retention are only permissible with counterclaims recognized by or legally binding to NOX.

The place of fulfillment is Korneuburg; this is the sole court of jurisdiction for suits against NOX.

For the legal relationship between NOX and the client, Austrian laws apply with the exception of the regulations for the conflict of laws.

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