

General Terms and Conditions (GTC)

nox Austria GmbH



I. Preamble

1. Unless otherwise stipulated in the following general terms and conditions, nox Austria GmbH (hereinafter: nox) operates on the basis of the latest version of the General Austrian Forwarders' Terms and Conditions (AÖSp). Insofar as the provisions of the AÖSp deviate from the provisions of these GTC, the provisions of these GTC take precedence. The principal agrees that these GTC apply to all future transactions, irrespective of further explicit reference, in particular also in the case of orders placed verbally, by telephone or by telex. The agreement of these GTC (incl. AÖSp) does not affect the validity of conventions in their respective valid version, insofar as their provisions compulsorily stipulate a deviating regulation, e.g. for road transport the Convention on the Contract for the International Carriage of Goods by Road (CMR).
2. Any conflicting or deviating terms and conditions of the principal are not deemed to be agreed and are not accepted. This also applies if the terms and conditions of the principal are not explicitly contradicted. Deviations are only effective if approved accordingly in writing.

II. General Obligations of the Principal

1. The principal is obliged to pack the package in such a way that it is safe for transport and weatherproof, in particular to ensure that it cannot be damaged in the course of the usual stresses during transport and handling and that other goods or transport and loading aids that are transported or stored with the package are not endangered. It is explicitly pointed out that the consignments are sent by express service/mass groupage. Therefore, the packaging must be suitable with regard to transport and stress for this type of shipment. It is explicitly stated that the principal must check the transport suitability of the packaging of the goods before handing it over to nox, taking this type of shipment into account. It must be taken into account that the Collis and packaged goods may be transported as groupage and may be sorted and transported within depots and transshipment points. The packaging must be such that the goods are not damaged when dropped diagonally from a minimum height of 80 cm. In groupage and express transport, frequent reloading is required in order to ensure efficiency. nox is not obliged to inspect or carry out measures to preserve the goods and their packaging. Such measures are the obligation of the principal.
2. The principal must submit the data required for the transport electronically in good time, i.e. before the start of the transport.
3. Each package must be clearly, durably and unambiguously marked by the principal with information about the consignor, consignee and, if necessary, with symbols for handling, but old markings must be removed.
4. Each consignment must be provided with a consignment note made available by nox and/or agreed with nox and approved by nox. This includes that the principal attaches a nox in-house barcode or a barcode that is readable for the carrier.
5. The principal must provide all documents required for customs clearance. By handing over these documents, the principal confirms the accuracy of the information contained in them. Incorrect information can result in civil and criminal consequences, including confiscation of the goods. Upon handover of the goods, nox will be commissioned with customs clearance as a customs agent, as far as this is permissible. The principal is obliged to immediately provide all necessary powers of attorney and declarations. The principal must inform nox in good time of all obligations under public law, e.g. customs law, which are associated with the goods. The principal is liable towards nox for all consequences of the omission. Upon request, the principal must immediately release nox from claims or additional claims for freights, customs duties, taxes and other charges made against nox. Otherwise, nox is entitled to take measures it deems appropriate to ensure its protection or release, if necessary, provided the circumstances justify it, even by destroying the goods.
6. The principal guarantees that
 - a) all information provided by the principal or his representative is complete and correct,
 - b) the consignment has been prepared by vicarious agents of the principal on secure premises,
 - c) the principal has employed only reliable personnel in the preparation of the consignment,
 - d) the principal has protected the consignment against interference by unauthorised persons during preparation, storage and transport to nox,
 - e) all applicable customs, import, export and other legal provisions and regulations have been observed.
7. In the case of packages that do not meet the requirements described above, nox can refuse transport and return them at the principal's expense and risk. If nox or the freight carrier can provide the package with a consignment note themselves on the basis of clearly identifiable data and/or documents received elsewhere, this will be done at a surcharge on the freight price customary for the location. In that case, the agreed transit time is suspended.

III. Transport Procedure and Delivery

1. The service of nox usually includes the organisation of the transport by the freight carrier, the handling and the pickup and delivery of consignments. The choice of the mode of transport, the means of transport and the transport route is made by nox at its own discretion with the due diligence of a prudent businessman. The vehicles used for delivery and pickup are usually manned by one driver.
2. Pickups take place either on a regular basis or upon request on the basis of a corresponding agreement. Cancellation of the order by the principal after handover of the consignment to nox or the commissioned freight carrier is only permissible until 5:00 p.m. at the latest on the day of pickup and must be received by nox in writing.
3. Delivery per NightExpress service is normally carried out, and not guaranteed on the next working day after pickup, from Tuesday to Saturday generally by 8:00 a.m. at the latest and, unless otherwise agreed, in the absence of the consignee. Delivery on holidays will only be carried out on the basis of a separate, explicit and written agreement and if the pickup from the consignor took place between Monday and Friday. This excludes holidays falling on a Sunday.

The package is delivered to a place specified by the principal or the consignee. Said place must be specified in written form. If the depot is not sufficiently sized and theft-proof, or if it is inaccessible or non-existent, then delivery is carried out by depositing the package at another location likewise specified in written form by the principal or the consignee. If such a place has not been specified, nox is entitled to leave the consignment at the consignee's premises due to the underlying urgency of the order. nox will only refrain from delivery if this has been agreed for such cases or if the risk of loss is so evident that the need for urgency is obviously less important. The principal is obligated to ensure that the respective consignee provides a delivery depot or sends a written description of the storage location to nox. In this context, the principal is also obliged to inform the consignee that the delivery will be carried out by depositing the goods at the consignee's address if no depot or storage location description is provided. The increased risk of loss resulting from this must be borne by the principal. In the event of non-delivery due to an evident risk of loss, the necessary return of the consignment to the nearest nox branch or to the principal is carried out at the expense of the principal. In case of a written agreement, nox may provide a lockable depot at an agreed location for an additional fee as agreed.

Once agreed, depots or specified drop-off locations are agreed as drop-off/delivery locations until the principal or the consignee instructs nox otherwise in written form. The consignment is deemed to have been delivered when the goods or the consignment are deposited in the depot, at the agreed storage location or when they are deposited.

Consignments that cannot be delivered by NightExpress due to their size or nature will be delivered by DaytimeExpress if the occasion arises.

nox provides proof of delivery electronically by means of scanning or by means of a manual entry in the consignment tracking system based on confirmation by the commissioned freight carrier.

4. The delivery by DaytimeExpress is normally carried out on the next working day after pickup, from Monday to Friday between 8:00 and 12:00 in metropolitan areas and from 8:00 to 18:00 in all other postcode areas.

The delivery is made to the first lockable door to any person present at the recipient's premises against signature. The confirmation of receipt will be recorded in written form and/or electronically (by means of a scanner). Proof of delivery will be provided on request against a surcharge.

If a consignment cannot be delivered (e.g. absence of the consignee), an attempt will be made to deliver the consignment again on the next working day. Unless otherwise agreed, consignments whose acceptance is refused by the recipient or which cannot be delivered for other reasons will be returned to the principal at the latter's risk and expense after 5 working days at the latest.

5. Transport and packaging materials are neither provided nor exchanged and/or returned by nox. In particular, the exchange of pallets and transport boxes is excluded unless the parties reach an individual written agreement to this effect.

IV. Size and Weight Restrictions

Packages whose weight exceeds 750 kg or whose dimensions exceed 3.20 m in length or 1.20 m in width or 1.50 m in height will only be transported after consultation and on the basis of a special written agreement.

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The transit time is suspended for packages that are pallets or bulky goods.

In the event of non-compliance with these requirements, nox is entitled to refuse to transport the consignment and to return it to the principal at the principal's expense and risk without further notice. However, if such goods are nonetheless taken over for transport, the agreed transit time is suspended. In the case of packages with a gross weight of more than 750 kg, the principal must ensure that the necessary unloading aids are provided at the place of delivery at his own expense and risk.

V. Goods Excluded from Transport

1. nox does not accept orders relating to the following goods:
 - a) precious metals, jewellery, precious stones, money, coins, securities, antiques, works of art, stamps or other tokens, tender documents, unique specimens and other goods of exceptionally high value.
 - b) live animals and plants, animal by-products, prohibited ingredients or animal remains, human remains or ashes
 - c) perishable goods and temperature-sensitive goods
 - d) explosive substances, fireworks, ammunition, complete weapons, explosive devices and other similar components
 - e) counterfeits, illegal goods, narcotics or other illegal drugs, pornographic material.
 - f) consignments whose contents, external design, transport or storage violate a legal or official prohibition or require special facilities, security precautions or authorisations
 - g) consignments as part of international air cargo, where the contents have been excluded or restricted from carriage by ICAO (International Civil Aviation Organization), IATA (International Air Transport Association), a competent authority or any other organisation
 - h) consignments which are not properly labelled, addressed or packaged so that they cannot be safely transported under normal conditions of care.
2. Goods with a value exceeding €50 000.
3. For exclusions of dangerous goods from transport, the following applies <https://www.nox-nachtexpress.at/en/customer-area/nox-downloads/>
4. If goods excluded from transport, or goods that are only accepted after prior written agreement, are handed over to nox without such an agreement, or dangerous goods are handed over without the legally required labelling and documentation, the principal is liable, even if not at fault, for any resulting damage to nox or other persons, including any resulting imposed penalties, fines, or similar, as well as associated expenses, including procedural and representation costs. Liability on the part of nox is excluded in such cases.
5. Mere notes on packages indicating the nature of the contents and general warnings do not constitute consent or obligation on the part of nox unless the respective note is affixed by nox itself after express written notification by the principal. The consent of the freight carrier as well as the tacit acceptance of a package do not constitute consent to the transport of goods excluded in the above specified points.
6. nox reserves the right to open and inspect any package accepted for transport, unless prohibited by law or explicitly excluded by prior written agreement with the principal. In such a case, the agreed transit time is suspended.

VI. Remuneration and Invoicing

1. For each service, the prices in the current price lists of nox apply, where all charges do not include toll costs, fuel surcharges, surcharges for other services and the applicable statutory value added tax. Not included in the prices are all import and export duties, customs duties and the like as well as the costs of transport insurance that is commissioned separately by the principal. The prices valid on the day the order is placed determine the calculation of the remuneration.
2. If invoicing is based on weight, the weight of individual packages will be rounded up to full kilograms. nox generally invoices on the basis of the weights provided by the principal together with the consignment data. Given that nox plans the transport capacities based on the weights provided by the principal, the difference in the freight charge will not be refunded in cases where the principal has specified a weight that is too high. If the principal does not indicate the weight of a package or specifies it incorrectly, nox is entitled to reweigh the consignment. If the weight is too low, nox is entitled to use the higher reweighed weight as the basis for invoicing. The burden of proof that the weight determined by nox is incorrect lies with the principal. In cases where no weight is specified (e.g. lack of data transmission) and the package was intended to be transported and not weighed, a weight of 10 kilograms is used as the basis for calculating the freight charge.

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3. If the dimensional weight is higher than the gross weight of the consignment, nox is entitled to calculate the freight charge on the basis of the dimensional weight. The calculation of the dimensional weight is carried out on the basis of 1 cbm = 150 kg.
4. Invoices are issued on a weekly basis. Invoices are due for payment in full 14 days after the invoice date.
5. nox is entitled to charge a late payment fee upon the 2nd reminder of payment. Costs arising from the involvement of a debt collection agency or a lawyer are charged to the principal.
6. Fuel, toll and other surcharges are charged separately and in addition to the agreed prices. All surcharges for services as well as the currently valid fuel surcharge are available at any time at www.nox-nachtexpress.at
7. If the costs of nox increase due to the introduction or increase of directly or indirectly caused costs that are part of the freight, such as taxes (but not VAT), fees (in particular tolls), fuel costs and labour costs (in particular collective agreement increases), nox is entitled to pass on such increases to the principal after informing him accordingly, i.e. to adjust the prices accordingly, from the time they take effect. However, this only applies if the transport costs of nox increase by at least 1% in total and/or the respective individual cost item increases by at least 3% compared to the time of the conclusion of the contract. There is no obligation to disclose the price calculation. If the principal objects to the price adjustment in writing within one month and if nox and the principal do not reach an agreement on the amount of the price adjustment within six weeks after receipt of the objection, nox and/or the principal may terminate the contract or the cooperation with two months' notice end of the month.

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VII. Insurance and Liability

1. nox explicitly points out that liability is limited according to these GTC, the AÖSp (with the exception of paragraphs 39-41 AÖSp) and where applicable, according to the statutory provisions and therefore recommends taking out a suitable transport insurance policy.
2. In the case that a higher insurance is desired, this can be arranged by nox after a written order has been received and a surcharge will be added in accordance with the value stated by the consignor on the consignment note. Consignments with a net value of more than €10 000 must be separately announced in written form and will automatically be insured higher at the currently valid premium rate and against a surcharge, unless the client explicitly declines this.
3. Unless otherwise stated below, the conditions of the AÖSp (with the exception of paragraphs 39-41 AÖSp) apply regarding nox's liability.
Liability for loss of and damage to the goods during road transport is limited to 8.33 SDR per kilogram of gross weight in accordance with Art. 23 CMR. In the event that the delivery deadline is exceeded, the damages to be paid by nox are limited to the amount of the transport charge.

For fragile or unpackaged consignments (e.g. glass, car body parts), liability applies up to a maximum of €70 per consignment. In the case of returns, nox is only liable for the total loss of the package up to the value of the goods, to a maximum of €700 as the condition of the return cannot be determined by nox at the time of acceptance.

4. Any liability of nox for consequential damages, consequential costs or other indirect damages, including liability for loss of profit, in particular in the event of late or improper delivery to the end customer, is excluded. If damage to the goods was not externally recognisable, the principal must prove that the damage was caused by nox. This also applies in cases where nox has not been provided with a theft-proof goods depot which is not accessible to third parties for overnight express consignments. In the case of packages that are not secure for transport or are inadequately packed, it is assumed that damage is due to this cause.
5. If nox receives a key or similar for access to a secured depot for the delivery of the packages, liability in the event of loss of the keys or other damage is limited to a maximum amount of €150 per key.
6. All damage in the context of the NachtExpress must be reported by the principal or the consignee by 12:00 noon on the day of delivery at the latest, with a detailed description of the damage. In the context of the DaytimeExpress, damage must be reported accordingly by 12:00 noon on the working day after the day of delivery at the latest. Externally visible damage must be noted down by the consignee upon delivery in the form of a precise note on the paperwork. If no damage report is made within the stated notification period, liability claims against nox are excluded. Packages reported as damaged must be kept ready for inspection and return with the original transport packaging by nox and/or a representative, otherwise nox is not liable for the reported damage. In the case of regulation of a damage, nox is entitled to the unrestricted right to realise the damaged goods.
7. For domestic transports, a total loss is presumed if the consignment is not delivered within 20 days and no scan event is evident in the system. For international consignments, this period is increased to 30 days. The principal must claim the total loss immediately after becoming aware of it, but at the latest within 3 weeks after expiry of the respective period. Later claims are excluded.
8. An agreement on a declaration of value or interest or a special delivery interest cannot be agreed. nox explicitly objects to any kind of declaration of value or interest, in particular those which may increase the maximum liability amounts provided for in international agreements. It is explicitly pointed out that any kind of disclosure of an order value, value of goods (etc.) - by whatever means (in invoices, orders, delivery notes, offers, etc.) - under no circumstances leads to an agreement on a declaration of value or interest, even in the absence of an explicit objection by nox. An agreement to increase or waive maximum liability limits stipulated in contractual terms or in international agreements is not possible.

VIII. Data Protection

nox is entitled to process personal data that is necessary for the fulfilment of the contractual obligations of nox within the meaning of Art. 6 Sec.1 lit. b GDPR and, insofar and as long as this is necessary in order to provide their services, also to disclose such data to subcontractors of nox. nox agrees to comply with the provisions of the GDPR in this respect.

In the case of deliveries of packages in the absence of the consignee, nox has a legitimate interest within the meaning of Art 6 Sec 1 lit f GDPR in taking and storing photos of the delivery process. The delivery of the package to the agreed delivery address is documented with photos; these photos are stored for the purpose of evidence during the statutory period of

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limitation (generally for 3 years). The principal is obliged to demonstrably inform the respective consignee within the meaning of Art. 13f GDPR about this circumstance and the legitimate interest of nox. In the event that the principal does not comply with this obligation to inform, nox must be fully indemnified and held harmless against any claims.

IX Severability Clause

If any provision of these general terms and conditions or of the AÖSp is invalid, then the validity of all other provisions is not affected.

X Final Clause

The contractual relationship is subject to Austrian law with exclusion of the provisions of the IPR. All disputes between the parties in connection with this agreement, including disputes about the effective existence of this agreement, as well as disputes relating to individual agreements concluded in execution of this agreement, shall be decided exclusively by the court in A-2100 Korneuburg, that is competent as regards the subject matter of the dispute.

Deviations from these GTC must be in written form. This also includes changes regarding the written form requirement set forth in this clause.

The general terms and conditions of nox can also be found on the Internet at www.nox-nachtexpress.at/agb/