

# “Packaging Direct” General Contract Terms and Conditions

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NOVENTIZ Packaging Direct: NOVENTIZ GmbH (NOVENTIZ) is a service provider for the return and recycling of packaging in accordance with the German Packaging Law (VerpackG).

## 1. General provisions

1.1 The services provided by NOVENTIZ are based solely upon the following “Packaging Direct” General Contract Terms and Conditions. Any deviating individual arrangements entered into between NOVENTIZ and the contractual partner (CUSTOMER) shall take precedence over these provisions. Any secondary agreements entered into verbally or subsequent changes to the contract shall be recorded by e-mail or via the portal.

1.2 The CUSTOMER is exclusively an entrepreneur as defined in Section 14 of the German Civil Code (BGB) or a public-law legal entity.

1.3 This contract covers all packaging that is placed on the market by the CUSTOMER on the territory of the Federal Republic of Germany and for which the CUSTOMER is subject to system participation requirements pursuant to Section 7, paragraph 1, sentence 1 of the VerpackG.

1.4 NOVENTIZ reserves the right to adjust or amend these Terms and Conditions. The CUSTOMER shall be bound by the version of the Terms and Conditions of which it was most recently aware and with regard to which it has declared its consent to NOVENTIZ.

1.5 The general terms and conditions of the CUSTOMER or of third parties shall not apply, even in the absence of an express objection on the part of NOVENTIZ. The exercise of contractual rights or the fulfilment of contractual obligations shall not imply agreement with the application of the general terms and conditions of the CUSTOMER.

## 2. Conclusion of the contract

2.1 By successfully concluding the registration process via the Packaging Direct web portal (portal) (2.2.1 – 2.2.3) and subsequently paying the stated invoice amount (2.3) to NOVENTIZ, the CUSTOMER shall submit a binding offer to enter into a contract with NOVENTIZ.

2.2 The registration process via the portal comprises a total of three steps:

2.2.1 In the first step, the CUSTOMER selects the relevant material fractions and enters the respective annual amounts that it has already placed or intends to place on the market on the territory of the Federal Republic of Germany during the first year of the contract. The CUSTOMER then indicates its preferred contract start date (calendar year).

2.2.2 In the second step, the CUSTOMER enters its customer data including its invoice address. At the same time, it will be shown the contents of the contract, an overview of the material fractions that it has selected with the respective annual quantities, as well as the total price payable. The CUSTOMER will also have the opportunity to familiarise itself with the General Terms and Conditions on which the contract is based and with the Privacy Notice. The CUSTOMER must give its consent to these.

2.2.3 In the third step, the CUSTOMER sends its offer to enter into a contract with NOVENTIZ by clicking on the button “*Conclude contract subject to payment*”.

2.3 Once the registration process has been successfully concluded, the CUSTOMER makes the payment. This can be done by direct debit, instant bank transfer, PayPal or credit card. For payments made by the CUSTOMER in other forms in exceptional cases with the consent of NOVENTIZ, NOVENTIZ shall charge a flat-rate fee of EUR 10.00 per payment, due at the same time as the payment.

2.4 NOVENTIZ shall accept the offer (conclusion of the contract) after the payment process has been successfully completed by sending a confirmation e-mail to the e-mail address provided by the CUSTOMER. This e-mail shall only be sent once the payment process has been successfully completed. The confirmation e-mail shall include a copy of the contract, a copy of the General Terms and Conditions, and the Privacy Notice. Until such time as the confirmation e-mail is received, all information provided via the portal or by NOVENTIZ employees shall be subject to change and non-binding.

2.5 Finally, the CUSTOMER shall receive an invoice from NOVENTIZ by e-mail, which can also be viewed in the portal.

## 3. Obligations of the CUSTOMER

3.1 For each subsequent calendar year, the CUSTOMER shall report its expected packaging quantity (forecast report) via the portal by 15 January at the latest and subsequently make the corresponding payment. The forecast report shall be submitted by means of the submission of the first quantity report for the following calendar year. This quantity report shall constitute an offer by the CUSTOMER to NOVENTIZ to adjust the existing contract. NOVENTIZ shall accept the contract adjustment by sending a corresponding confirmation e-mail regarding the adjustment after the payment process has been successfully completed. The CUSTOMER shall then receive an invoice from NOVENTIZ by e-mail, which can also be viewed in the portal.

3.2 By 1 March of each year at the latest, the CUSTOMER must report via the portal the total packaging quantities subject to system participation that it has actually placed on the market during the past calendar year (year-end quantity report). The year-end quantity report shall be submitted by means of the submission of the final quantity report for the respective calendar year and shall also constitute an offer to adjust the contract. The provisions of Section 3.1 shall apply accordingly.

3.3 If the CUSTOMER has placed more quantities of packaging subject to system participation requirements on the market than reported upon the conclusion of the contract pursuant to Section 2.2.1 or than reported for the respective subsequent calendar year pursuant to Section 3.1, it may report the corresponding quantity of packaging via email to [verpackung@noventiz.de](mailto:verpackung@noventiz.de) by 1 March of the calendar year following the year in question. The provisions of Sections 3.1 and 2.3 shall apply accordingly to subsequent reports.

3.4 If it transpires that the quantities reported by the CUSTOMER in the forecast report have not been reached, any payments already made for over-reported packaging quantities cannot be refunded.

3.5 Unless otherwise specified by NOVENTIZ, all reports by the CUSTOMER must be made exclusively via the portal. If, in deviation from the above, reports are not submitted via the portal, NOVENTIZ shall charge a flat-rate fee of EUR 10.00 per report. The CUSTOMER shall be responsible for the information provided being accurate and complete. Any consequences arising from missing, erroneous or late data shall be borne by the CUSTOMER.

3.6 The CUSTOMER confirms that it shall not report to NOVENTIZ, neither in its own name nor in the name of third parties, quantities of packaging subject to system participation for parties obligated pursuant to Section 7, paragraph 1 of the VerpackG.

## 4. Obligations of NOVENTIZ / Disposal confirmation

4.1 With regard to the CUSTOMER's packaging subject to system participation requirements, NOVENTIZ shall take over the necessary organisation to meet compliance obligations pursuant to the provisions of the VerpackG. To accomplish this task, NOVENTIZ shall make use of dual systems pursuant to Section 3, paragraph 16, sentence 1 of the VerpackG and/or appropriate return and recycling partners. NOVENTIZ shall be entitled to conclude agreements with these services, to amend these agreements and to terminate them. The classification as packaging subject to system participation requirements and the allocation to the relevant material fraction shall be based solely on the information supplied by the CUSTOMER.

4.2 After confirmation of the conclusion of the contract, NOVENTIZ shall grant the CUSTOMER access via the portal to its climate certificate and its disposal confirmation, evidencing proper fulfilment as a result of having commissioned NOVENTIZ of the return and recycling obligations in relation to the CUSTOMER's packaging subject to system participation. There are no additional costs for this service. Insofar as the CUSTOMER makes subsequent reports in accordance with Section 3.3, the disposal confirmation shall be automatically adjusted in each case.

## **5. Prices / Price adjustments / Sending of invoice**

5.1. All prices shown within the framework of this contractual relationship are net prices exclusive of VAT at the statutory rate. The fee to be paid by the CUSTOMER also includes a flat-rate administration fee to be paid annually by the CUSTOMER irrespective of the reported quantities. The amount of the administration fee is displayed before conclusion of the contract if no quantities are initially entered in the "Calculation" step.

5.2 In the event of an increase in operating and/or disposal costs, NOVENTIZ reserves the right to adjust the agreed prices for its service accordingly. This applies in particular in the event of an increase in the costs of the service providers commissioned by NOVENTIZ and for costs that are triggered by amendment of the legal provisions. Price adjustments shall be made exclusively by e-mail or via the portal and shall enter into effect six weeks after their announcement, unless the CUSTOMER objects by e-mail or via the portal within a period of two weeks after receipt of the price adjustment notice. If the CUSTOMER objects, it shall be entitled to terminate this contract at the time of the proposed price adjustment by e-mail or via the portal if NOVENTIZ maintains the price adjustment.

5.3 If the CUSTOMER fails to comply with its obligation to submit the forecast report in accordance with Section 3.1 or the year-end quantity report in accordance with Section 3.2, or fails to do so in a timely manner, NOVENTIZ shall be entitled to issue an interim invoice in the amount of the most recent fee due. Before issuing an interim invoice, NOVENTIZ shall request that the CUSTOMER catch up with submission of the forecast report within a reasonable period of time.

5.4 If the CUSTOMER is in default of payment, the statutory default provisions pursuant to Section 288, paragraph 2 and 5 of the German Civil Code (BGB) shall apply and NOVENTIZ shall be entitled not to report to a dual system the packaging that is the subject of the contract.

5.5 All invoices to be issued within the scope of the contractual relationship between the CUSTOMER and NOVENTIZ shall be sent exclusively electronically and can also be viewed on the portal.

## **6. Technical malfunction**

In the event of a technical malfunction, NOVENTIZ shall endeavour to rectify reported errors within a reasonable time frame. NOVENTIZ also reserves the right to change the technical specifications of the portal for operational reasons or to block the portal for operational reasons (e.g. maintenance work). If it is technically possible and reasonable, the CUSTOMER shall be informed beforehand. NOVENTIZ shall strive to make the portal available again as soon as possible.

## **7. Right of offsetting and retention**

The CUSTOMER shall be entitled to offset or retain payments only if its counter-claims have been declared legally binding by court decision, are undisputed or are explicitly recognised by NOVENTIZ.

## **8. Confidentiality**

Non-public information obtained in conjunction with the execution of this contract shall be treated confidentially by both parties to this contract. Information may be disclosed to a third party only if this is imperative for legal reasons or for the execution of this contract. The obligation of confidentiality shall apply for the duration of this contract as well as for a period of five years after its termination.

## **9. Term of contract**

9.1 This contract shall be concluded with the CUSTOMER for an indefinite period. The contract may be terminated by either party giving notice of four months to the end of the calendar year, doing so by e-mail or via the portal.

9.2 The contract start date shall be the date selected by the CUSTOMER during the registration process. Termination prior to commencement of this contract shall be excluded.

9.3 The CUSTOMER's right to terminate pursuant to Section 5.2 and the right of the parties to terminate for good cause shall remain unaffected. Good cause shall be deemed to exist in particular in the event of default in payment despite a reminder, or if a party culpably breaches one of its obligations assumed under this contract and, despite receiving a warning with a suitable deadline, does not remedy the breach.

## **10. Place of jurisdiction / Place of performance / Applicable law**

10.1 The place of jurisdiction and performance for all rights and obligations, as well as disputes, arising directly or indirectly from this contract, is the place at which NOVENTIZ has its registered office.

10.2 This contract is governed exclusively by the law of the Federal Republic of Germany.

## **11. Amendment of the implementation and enforcement provisions**

11.1 The parties agree that in the event of the ministries, authorities and/or committees concerned with the implementation and enforcement of the VerpackG making new proposals/guidelines for the application of the relevant provisions of the VerpackG or the previous understanding of the provisions of the VerpackG changing as a result of current case law, this contract shall be amended accordingly to the extent necessary. The same shall apply in the event of a not insignificant amendment of, addition to and/or replacement of the VerpackG. The adaptation shall take effect as of the earliest date on which the guidelines are applied by the enforcement authorities, or from which the new law enters into force.

11.2 In the event that, due to NOVENTIZ Dual GmbH joining the Gemeinsame Stelle dualer Systeme Deutschland GmbH (the joint body for all dual systems), the need arises to amend this contract as a result of the provisions of or an amendment or supplement to the clearing agreements concluded between the operators of dual systems pursuant to Section 3, paragraph 16, sentence 1 of the VerpackG and the Gemeinsame Stelle dualer Systeme Deutschland GmbH (so-called volume clearing contract [Mengenclearingvertrag], and so-called associated charge clearing contract [Nebenentgeltclearingvertrag]), or key decisions taken by the joint body, paragraph 1 shall apply accordingly.

11.3 Should the parties, in contravention of paragraph 1 or paragraph 2, not agree on an adaptation, each party shall be entitled to terminate the contract by e-mail or via the portal by giving notice of one month to the end of the month. The termination shall be preceded by an announcement by e-mail or via the portal giving two weeks' notice.

## **12. Severability clause**

Should individual provisions of these General Terms and Conditions be void or ineffective or unenforceable or become so after conclusion of this contract, this shall not affect the validity of the remaining provisions. The relevant provision shall be replaced by the parties so as to achieve, as far as possible, the originally intended commercial and legal purpose. If the parties are unable to reach an agreement, the ineffective or unenforceable provision shall be replaced by a statutory regulation that reflects most closely the commercial intention pursued by the parties with the ineffective or unenforceable provision. The aforementioned shall also apply in the event that the General Terms and Conditions prove to be incomplete.