

General Contractual Terms and Conditions and Information for Customers

Reservations: Any text of these **General Contractual Terms and Conditions** delivered to the Customer in a language other than Polish is only provided to enable understanding.

In each case the Polish version prevails and forms an official text between the Parties.

I. General terms and conditions

§ 1. Basic terms and conditions

(1) These Terms and Conditions apply to agreements entered into by **Noctiluca spółka akcyjna** with its registered office in Toruń, ul. Jurija Gagarina 7/41B (87-100 Toruń), entered in the Register of companies kept under the National Court Register under the number 0000769219, NIP (VAT No.) 8792709668, REGON (statistical ID) 382430546 (hereinafter referred to as **Noctiluca**) with Customers for the sale of goods or the provision of services by means of communication stipulated herein, unless the Parties agree otherwise in writing.

(2) Noctiluca offers goods and services for sale only if the Customer is an entrepreneur, i.e. a natural or legal person or a partnership having legal capacity and acting within its business or professional activity as at the agreement date for purposes related directly to such an activity ("**Customer**"). Noctiluca does not enter into agreements with consumers and these General Contractual Terms and Conditions do not apply to agreements with consumers.

(3) Provisions of these General Contractual Terms and Conditions that apply to goods apply to services, as well.

§ 2. Execution of the agreement

(1) The purpose of the agreement is to sell goods or services. Basic characteristics of goods or services are published on <https://noctiluca.eu>, while key and detailed properties thereof are specified in the relevant offer prepared by Noctiluca in relation to the Customer's request.

(2) Information concerning goods and services published in the Internet (including <https://noctiluca.eu>) is not binding and does not constitute a binding offer for the agreement. This is only general commercial or marketing information.

(3) At the Customer's request, Noctiluca will present an individual offer (**Offer**), which will be sent to the Customer by e-mail and will be binding on Noctiluca for 5 (five) days from the day it is sent by e-mail, unless the Offer provides otherwise.

(4) The agreement is entered into the moment the Customer accepts the Offer, provided that such acceptance means sending the order form attached to the Offer (**Order Form**) back by e-mail. By sending the Order Form to Noctiluca, the Customer accepts the Offer and these General Contractual Terms, as well as Conditions and places a valid order (**Order**) by entering into an agreement with Noctiluca under terms and conditions set out in the Offer and the General Contractual Terms and Conditions, subject to § 3.6 and § 3.7. In the event the Order Form contains any fields that have not been filled in by Noctiluca, the Customer must complete those data, because the Order is deemed to be placed only if the completed Order Form is submitted. The Customer does not have the right to change the data entered in the Order Form by Noctiluca and if the data are changed, the Order is not deemed to have been placed by the Customer. Such a changed Form will be considered as an inquiry referred to in Section 3 above which is subject to the parties' agreement on the change. In that case the procedure described in Sections 3 and 4 above must be repeated.

(5) The Order will be processed and all information required in connection with the execution of the agreement will be provided by electronic mail. Therefore, the Parties must make sure that their e-mail address is correct and the receipt of e-mails is technically feasible and, in particular not blocked by SPAM filters, because Noctiluca does not confirm information sent by e-mail through other contact channels.

(6) In the case of goods, Noctiluca's liability for goods, unless the offer referred to in Section 3 above provides otherwise, ends as of the delivery of the goods to the carrier or the posting (hand-over) of the goods, provided that Noctiluca is not liable for the loading of goods.

§ 3. Prices, terms of payment and shipment costs

(1) Prices (**Price**) specified in individual offers and shipment costs are given net and do not include VAT.

(2) Shipment costs are not included in the Price and will be charged separately, unless the Offer provides otherwise, e.g. free-of-charge shipment has been offered.

(3) Noctiluca is not liable for any additional costs related to the shipment of goods to the Customer, including insurance, customs duties, other customs fees, taxes or other similar charges, which will be fully payable by the Customer.

(4) All costs incurred in connection with the transfer of funds (transfer fees or foreign exchange fees applied by credit institutions) are fully payable by the Customer.

(5) The Customer can use payment options specified in the Offer. Unless the Offer does not provide for another payment due date, the Customer must pay the Price and all costs referred to in Sections 2, 3 and 4 above within 7 (seven) days of the day the Order is placed, provided that the payment is deemed to have been made on the day the funds are credited to Noctiluca's bank account. The Order performance deadline is counted from the day the funds are credited to Noctiluca's bank account.

(6) No mandatory performance by Noctiluca. Until the Price and all other costs referred to in Sections 2, 3 and 4 above are paid, Noctiluca is not obliged to provide any services to the Customer without any liability thereunder.

(7) Termination of the agreement. In the event the Price and all other costs referred to in Sections 2, 3 and 4 above are not paid within the time limit specified in the Offer or in Section 5 above, the agreement will be terminated. No transfer of funds made into Noctiluca's bank account thereafter, whatever the reason for delay, will result in the recovery of the agreement and the funds will be repaid to the Customer, provided that the Customer pays costs of such a repayment.

(8) In the event the Customer fails to collect the goods ordered, it will be liable for all amounts related to the return of the goods, warehousing or other related fees.

§ 4. Return of goods

(1) An expected shipment time is defined in the Offer.

(2) If for reasons Noctiluca is not liable for, goods ordered by the Customer on the basis of the agreement are not available, the Customer will be immediately informed about that.

(3) Goods are shipped at the Customer's risk. At the Customer's request, goods will be shipped with relevant transport insurance, whose costs are payable by the Customer.

(4) The agreement may be performed in instalments, provided that such parts of the agreement will be performed (and invoiced) by Noctiluca separately. Noctiluca informs the Customer that the cost of the shipment of goods in instalments can be greater than the costs payable in the case of the one-off performance of the agreement. Each part of the agreement is governed by these General Contractual Terms and Conditions as if each part formed a separate Order.

§ 5. Exclusion of statutory defect warranty

(1) Acting on the basis of Art. 558 of the Civil Code, the parties hereby exclude Noctiluca's liability for defect warranty, provided that the exclusion of liability is ineffective if Noctiluca deceitfully hides any defects in the goods.

§ 6. Retention right

(1) The Customer may exercise the retention right only to the extent to which it applies to claims arising from the same agreement.

§ 7. Withdrawal from the agreement

(1) Noctiluca may withdraw from the agreement if:

- (a)** the Customer fails to collect goods ordered, provided that in such a case Noctiluca has the right to deduct amounts due under § 3.8 from the Price paid by the Customer. In addition, if as a result of the Customer's failure to collect the goods, the value of the goods is lost, Noctiluca has the right to deduct the Price paid by the Customer by an amount corresponding to the damage, including in particular an amount by which the value of the goods is lost. Noctiluca will repay the part of the Price upon deduction to the Customer, provided that the Customer pays the cost of such a repayment;
- (b)** Noctiluca's operations are disturbed by Force Majeure, which means any extraordinary event that could not be prevented by the parties and which is beyond the parties' control, including in particular riots, fires, strikes, industrial actions, military conflicts, martial law, natural calamities, epidemics or states of epidemic threat, unfavourable weather conditions preventing the transport of goods, any government orders or changes in law establishing production limitations or making production or sale impossible, acts of terrorism, which hinder the performance of the agreement, fully or partially.

(2) The Customer may withdraw from the agreement if Noctiluca is not able to ship goods under the agreement within 1 (one) month over the deadline specified in the Offer, unless the parties agree otherwise. Any change in deadlines must be communicated to and accepted by the Customer by e-mail. This section also applies to the circumstances referred to in § 4.2.

(3) The party withdrawing from the agreement will notify the other party by e-mail and specify the cause of withdrawal.

(4) Subject to Section 1. (a) above and absolutely applicable legal regulations, in the event of withdrawal from the agreement the parties will return each other everything that they received from the other party on the basis of the agreement.

§ 8. Liability

(1) Noctiluca's liability for damages is in each case limited solely to the actual loss suffered by the Customer.

(2) Noctiluca is not liable for any specific properties of goods or the suitability of goods to the Customer's intended purposes, unless in its Offer it warrants that goods have specific properties or are suitable for the Customer's intended goals.

§ 9. Choice of law, place of performance, jurisdiction

(1) Agreements subject to these General Contractual Terms and Conditions, including the interpretation hereof, are governed by Polish law, excluding the UN Convention on contracts for international sale of goods.

(2) The place of performance and jurisdiction is the registered office of Noctiluca and all disputes arising from the performance of agreements entered into on the basis of these General Contractual Terms and Conditions will be resolved by a Polish court having jurisdiction over Noctiluca.

(3) We reserve the right to amend these General Contractual Terms and Conditions at any time, provided that each amendment applies to all future agreements, but agreements entered into as a result of the Order concerning the Offer sent to the Customer before the amendment are governed by the version of the General Contractual Terms and Conditions being in force as at the Offer sending date.

II. Miscellaneous

1. Data of the seller/service provider

Noctiluca S.A. with its registered office in Toruń, ul. Jurija Gagarina 7/41B (87-100 Toruń) entered in the register of companies kept by the District Court in Toruń, 7th Commercial Division of the National Court Register, under the number 0000769219, NIP (VAT No.) 8792709668, share capital, fully paid-up: PLN 233 625.00.

2. Information concerning the execution of the agreement

Technical activities connected with the execution of the agreement, as well as the execution of the agreement and amendments to the agreement are subject to § 2 hereof (Part I). The Parties agree that the parties failure to respond, including immediate response, to any inquiry, correspondence or offer of the other party, unless the procedures stemming from § 2 hereof (Part I) are met, subject to § 3.6 and § 3.7 above, will not mean, or be considered by the parties as, the effective execution or amendment of the agreement.

3. Language of the agreement

The contractual language is Polish.

4. The Customer's information duty

The Customer must immediately inform Noctiluca about any circumstance that make the execution or performance of the agreement impermissible, in particular if they stem from sanctions applicable to the Customer due to its activities, country of origin or financial transfers, beneficiaries, etc.