

## General Terms and Conditions of Delivery

Status: 01.07.2021

### § 1 Generalities – Scope

(1) These Terms and Conditions of Delivery shall apply exclusively to companies, legal entities under public law or special funds under public law within the meaning of Art. 310 para. 1 BGB (German Civil Code).

(2) These Terms and Conditions of Delivery of Oemeta shall apply exclusively to the conclusion of contracts for deliveries by Oemeta and their execution, to the exclusion of any terms and conditions of the customer that conflict with or deviate from its Terms and Conditions of Delivery, unless Oemeta expressly agrees to their validity in text form. The Terms and Conditions of Delivery of Oemeta shall also apply if it carries out deliveries without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from its Terms and Conditions of Delivery.

(3) These Terms and Conditions of Delivery shall also apply to all future transactions of Oemeta with the Customer, insofar as these are legal transactions of a related nature.

### § 2 Offer and offer documents

(1) The offers of Oemeta are non-committal and non-binding. They merely represent an invitation to the Purchaser to submit an offer. Additions, amendments or ancillary agreements to such requests must be agreed in text form for evidence purposes.

(2) Oemeta reserves ownership rights and copyrights to illustrations, drawings and calculations and other documents. They may not be made accessible to third parties.

(3) Orders that constitute offers pursuant to Art. 145 BGB (German Civil Code) may be accepted by Oemeta within two weeks.

### § 3 Description of the delivery item

(1) The illustrations, dimensions, weights and other technical data contained in Oemeta's offers are subject to deviations due to the materials used, which are customary in the trade; tolerances in accordance with DIN are also possible. If Oemeta performs its services on the basis of the Customer's dimensional data, the Customer shall be responsible for the correctness of the dimensional data.

(2) The Purchaser shall himself obtain all official permits required for the use of the purchased item. The costs of corresponding approval and inspection procedures shall be borne by the Purchaser.

### § 4 Prices – payment conditions

(1) Unless otherwise agreed, Oemeta's prices shall apply "ex works" plus - where applicable - value added tax. Insofar as the agreed prices are based on Oemeta's list prices and the delivery is not to take place until more than four months after conclusion of the Contract, our list prices valid at the time of delivery shall apply (in each case less any agreed percentage or fixed discount).

(2) The deduction of a discount requires a special agreement in text form.

(3) Unless otherwise stated, the purchase price is due immediately against invoice without deduction. If the Purchaser defaults on payment, Oemeta shall be entitled to demand interest on arrears at a rate of 9 percentage points above the base interest rate (the current base rate is published 2 times per year by the German Bundesbank). In the event that Oemeta proves that it has suffered greater damage as a result of the delay, it shall be entitled to assert such damage.

(4) In the event that the Purchaser is in default with a claim for payment, Oemeta shall also be entitled to payment of a lump sum in the amount of 40.- euros. This shall also apply if the payment claim is a down payment or another instalment payment. The lump sum shall be credited against any damages owed to the extent that the damage is due to costs of legal prosecution.

(5) The Purchaser shall only be entitled to off-set if his counterclaims have been legally established, are undisputed or have been acknowledged by Oemeta. Rights of retention may only be asserted if the counterclaim is based on the same legal relationship.

## **§ 5 Shipment/Transfer of risk**

(1) Unless otherwise agreed, delivery is agreed 'ex works' (according to Incoterms ICC2020).

(2) If the shipment of the object of sale has been agreed, the danger of accidental loss and accidental deterioration of the object of sale shall pass to the Purchaser upon handover to the carrier - irrespective of who bears the freight costs.

## **§ 6 Delivery times and periods**

(1) The start of the delivery period specified by Oemeta shall be subject to the Purchaser providing timely and proper information on all technical issues.

(2) Oemeta shall have a reasonable period of time to perform its delivery. Delivery times shall be agreed in written text form for evidence purposes.

(3) If Oemeta is in default of delivery for reasons for which it is responsible, Oemeta shall be liable for damages in accordance with Art. 9 of these General Terms and Conditions of Delivery. The Purchaser is entitled to withdraw from the Contract in accordance with the legal regulations. The delivery and performance obligation of Oemeta shall be subject to correct and timely self-delivery, unless the incorrect or delayed self-delivery is the fault of Oemeta. The lack of fault must be proven by Oemeta. Even binding delivery times shall be extended appropriately in cases of force majeure, in particular in the event of shortages of materials or transport facilities, industrial disputes, war, civil unrest, official or legal measures

(e. g. export restrictions) and other unforeseeable and serious events (irrespective of whether these events of force majeure affect Oemeta or its suppliers or subcontractors) by the duration of the fault plus a reasonable lead time. Oemeta shall be obliged to inform the Purchaser of the event without delay to the extent reasonable. If the hindrance lasts longer than four weeks, both contract parties are entitled to withdraw from the Contract with regard to the part not yet fulfilled. If the suspension of the delivery obligation is unreasonable for the Purchaser, he shall also be entitled to withdraw from the Contract beforehand after expiry of a reasonable period to be set by him. It is not necessary to set a time limit in the cases specified in the legal regulations (in particular Articles 323 para. 2 and 4, 324, 326 para. 5 BGB (German Civil Code), Art. 376 HGB (German Commercial Code)). If a partial service has been rendered, the Purchaser may only withdraw from the entire contract if he has no interest in the partial service.

(4) The compliance with Oemeta's delivery obligations shall be subject to the timely and proper fulfilment of the Purchaser's obligations.

(5) If the purchaser is in default of acceptance or culpably breaches other obligations to cooperate, Oemeta shall be entitled to demand compensation for the damage incurred by it in this respect, including any additional expenses. Further claims are expressly reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Purchaser at the latest at the point in time at which the Purchaser is in default of acceptance and/or debtor's default.

## **§ 7 Call orders**

Call orders must be called within 6 months, otherwise Oemeta shall be free either to demand acceptance of the finished goods or to claim damages for non-performance. In the event of a claim for damages, Oemeta shall be entitled to claim 20% of the

order amount without any special proof of damage, reserving the right to assert any claim in excess of this for any damage it has incurred, which must be proven by Oemeta.

## **§ 8 Warranty for defects and prescription**

(1) Claims for defects of the Purchaser or other claims of the Purchaser based on a defect require that the purchaser has duly fulfilled his obligations to inspect and to give notice of defects according to Art. 377 HGB (German Commercial Code). Otherwise, the goods shall be deemed approved. The commencement of negotiations/investigations concerning the defects complained of by the Purchaser shall only constitute an attempt to reach an amicable settlement. This shall not be construed as a tacit waiver of the objection of late notification of defects. To the extent a claim is not excluded under this paragraph 1, the following shall apply:

(2) Insofar as there is a defect in the purchased item, Oemeta shall be entitled, at its discretion, to remedy the defect or to make a replacement delivery.

(3) Unless otherwise agreed, the place of performance for subsequent performance shall be Uetersen.

(4) If the subsequent performance has failed or if a reasonable deadline to be set by the Purchaser for the subsequent performance has expired unsuccessfully or is dispensable in accordance with the legal provisions, the Purchaser may withdraw from the contract in question or reduce the price of the purchased item in question accordingly. If the defectiveness relates to only a part of the purchased item, the Purchaser may only withdraw from the entire purchase contract if he can justifiably claim that he has no interest in the delivery of the remaining (defect-free) purchased item of the purchase contract in question. Claims of the purchaser for damages or reimbursement of futile expenses including those according to Art. 439 III BGB (German Civil Code) presuppose our fault and exist only in accordance with Art. 9.

(5) All claims derived from the defectiveness of the object of purchase - including any claims for damages as well as any competing, congruent claims for damages from noncontractual liability - shall be prescribed one year after delivery within the meaning of Art. 438 II BGB (German Civil Code).

(6) The shortened prescription period according to paragraph 5 does not apply to liability for damages resulting from culpable injury to life, body and health, other damages based on an intentional or grossly negligent breach of duty.

- a) Damages resulting from culpable injury to life, body and health,
- b) other damages based on an intentional or grossly negligent breach of duty.

## **§ 9 Disclaimer**

(1) The liability of Oemeta for damages, irrespective of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract and tort, shall be limited in accordance with this clause insofar as fault is involved in each case

a) Oemeta shall be liable for damages in accordance with the legal provisions in the event of intent and gross negligence, the absence of warranted characteristics, the assumption of guarantees and fraudulent intent.

b) In cases of gross negligence on the part of simple vicarious agents and non-executive employees without breach of an essential contractual obligation (= obligation the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the Customer regularly relies and may rely), Oemeta's liability shall be limited, in deviation from a), to compensation for the foreseeable damage typical of the contract

c) In cases of simple negligence, Oemeta shall only be liable for damages arising from the breach of a material contractual obligation (= obligation, the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer regularly relies and may rely); in this case, however, liability shall be limited to compensation for the foreseeable damage typical for the contract;

d) Within the scope of Point c), Oemeta shall not be liable for loss of profit.

e) In all other respects, any liability on the part of Oemeta is excluded.

(2) Insofar as Oemeta's liability is excluded or limited in terms of reason or amount, WHAT? this limitation of liability or this liability resolution shall also apply to any personal liability of employees, legal representatives and vicarious agents.

(3) The legal regulations regarding the burden of proof remain unaffected.

(4) The above limitations and restrictions of liability shall also apply to the reimbursement of futile expenses of the purchaser.

(5) The above provisions or limitations of liability in this Art. 9 do not apply to mandatory liability under the Product Liability Act, as well as for injury to life, limb or health.

(6) The Purchaser shall be obliged to notify Oemeta in writing without delay of any damage within the meaning of the above liability provisions or to have Oemeta record such damage so that Oemeta is informed as early as possible and can possibly still work together with the Purchaser to mitigate the damage.

(7) Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.

## **§ 10 Retention of title and security of claim**

(1) Oemeta shall retain ownership of the purchased item until all claims it has against the Customer arising from the delivery contract and from other business relationships have been settled.

(2) The Purchaser shall be entitled to sell the purchased item in the ordinary course of business as long as he meets his obligations arising from the business relationship with Oemeta in good time. However, he may neither pledge the purchased item nor assign it as security.

(3) If the Purchaser acts in breach of the contract, in particular if he fails to pay the due purchase price, Oemeta shall be entitled to withdraw from the contract in accordance with the legal provisions and/or to demand the return of the purchased item on the basis of the retention of title. The demand for restitution shall not at the same time include the declaration of withdrawal; rather, Oemeta shall be entitled only to demand restitution of the purchased item and to reserve the right to withdraw from the contract. If the purchaser does not pay the due price, Oemeta may only assert these rights if Oemeta has first unsuccessfully set the Purchaser a reasonable deadline for payment or if setting such a deadline is dispensable under the legal provisions. Furthermore, Oemeta shall be entitled to withdraw from the contract if an application is made to open insolvency proceedings against the Purchaser's assets.

(4) The Purchaser hereby assigns all claims and rights arising from the sale of the purchased item to Oemeta as security. Oemeta hereby accepts the assignment. The Purchaser remains authorised to collect these claims even after the assignment. This shall not affect Oemeta's right to collect the claim itself. However, Oemeta undertakes not to collect the claim as long as the Purchaser meets his payment obligations, it is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. However, if this is the case,

Oemeta may demand that the Purchaser informs it of the assigned claims and their debtors, provides all information required for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.

(5) The Purchaser shall inform Oemeta without delay of any compulsory enforcement measures by third parties against the purchased item, against the claims assigned to Oemeta or against other securities, handing over the documents required for intervention. This also applies to impairments of any other kind.

(6) If the value of the existing securities exceeds the secured claims by more than 20% in total, Oemeta shall be obliged, at the purchaser's request, to release securities to this extent at Oemeta's discretion.

## **§ 11 Jurisdiction and place of performance**

(1) Insofar as the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity or a special fund under public law, Uetersen shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Notwithstanding the foregoing, Oemeta shall be entitled, but not obliged, to bring an action against the purchaser in the court having general jurisdiction over the Purchaser.

(2) Unless otherwise agreed, Uetersen shall be the place of performance.

(3) The German law shall apply exclusively. The application of the UN Sales Convention is excluded. This also applies to cross-border legal transactions.

## **§ 12 Text form**

The contract is concluded in written text form. No verbal collateral agreements are known at the time of conclusion of the contract. However, should any exist, they must be immediately stipulated in written text form for evidentiary purposes.

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