

General Terms and Conditions

I. General information

(1) The following General Terms and Conditions shall apply to all offers, orders, deliveries and services of OWI on an exclusive basis. Agreements inconsistent with these General Terms and Conditions shall not apply unless they have been agreed to in writing and OWI has expressly accepted such agreements.

(2) Our conditions of sale and delivery shall only be valid vis-à-vis entrepreneurs in the sense of § 310, para. 1 BGB [German Civil Code].

II. Offers and conclusion of the contract

(1) The Seller's offers shall not be binding with respect to price, quantity, delivery time and availability.

(2) Technical data, specifications and alterations, pictures, drawings, figures, measurements and all other performance and consumption data remain reserved and are not binding unless the parties agree otherwise in writing. They do not act as a guarantee. We reserve the right to modify our constructions at any time, and to apply these changes in a moderate way, however, we are not obliged to carry out such modifications to products/items already delivered. Justified changes which are made to layout and colour or which are taken out according to customs and usage, do not justify complaints or cancellation of a contract.

(3) The Customer's orders shall become binding to the Seller upon receipt by the Customer of the Seller's written order acknowledgment (or invoice or delivery note).

III. Prices and Payment terms

(1) Insofar as not otherwise stated in our confirmation of order, our prices are "ex warehouse" excluding packing which will be charged separately, and the applicable value-added tax.

(2) Insofar as not otherwise indicated, the prices included in our offers are binding for us for 30 days following the date of the offer.

(3) In case of a delay of payment, the Commercial User shall pay interests amounting to a rate of 8 % above the current prime rate on the amounts overdue.

(4) Off-setting and reimbursements are not applicable, except if the off-set request is accepted by both parties or if it is res juridicta.

IV. Delivery periods

(1) Statement of a delivery-date takes place according to judgement. Delivery periods begin with the date of the order confirmation, but not before the Customer provides any solutions and answers to technical questions. Delivery shall be subject to the Customer respecting his obligations. The defense of non-performance remains valid.

(2) We shall not be responsible - even in the case of bindingly agreed periods and dates - for delays in delivery and performance, if these delays are due to Force Majeure or due to events which not only temporarily essentially complicate or make impossible the delivery (including, in particular, strikes, lock-outs, governmental orders etc.), even if they affect our suppliers or their sub-suppliers. Changes required by the Customer also trigger an accordingly suitable delivery delay.

(3) Insofar as we are responsible for the non-compliance of bindingly agreed dates and periods or if we are in delay, the customer shall be entitled to a compensation for delay amounting to a half percent for every completed week of the delay, in total however, a maximum of five percent of the invoice value of the supplies and performances affected by the delay. Any and all further claims shall be excluded, unless the delay is caused by our gross negligence.

(4) In the case of call-orders without explicit validity periods, batch-sizes and delivery dates, we must wait 3 months after the order confirmation before requiring a binding agreement. If the client does not respond within 3 weeks, we are entitled, after a 2-week extension time, to step back or to ask for compensation for non-fulfilment, delivery is no longer required.

V. Transfer of Risk

(1) The risk passes to the customer, as soon as the delivery has been handed over to the Customer and set up for him and as soon as he is notified of this fact

(2) If the Client is in default of acceptance or if he fails to comply with other contractual obligations, we shall be entitled to demand damages including additional costs and expenses as incurred. The right to claim additional indemnities remains reserved.

VI. Warranty

(1) Claims of the customer based on defects require that the customer has duly fulfilled his/her duty to examine and to make a complaint in respect of a defect immediately on receipt of the goods due to § 377 HGB [Commercial Code].

(2) The customer is under the obligation to test-run the product.

(3) In the event that a defect is given we shall be entitled to choose a posterior fulfilment either in the form of a correction of faults or in the form of a delivery of a new faultless good.

(4) We are liable in accordance with the legal provisions, insofar as the customer asserts a claim for damage which is based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Insofar as we are not charged with intentional infringement of the contract, the liability for damage is restricted to the foreseeable damage which typically occurs. The liability due to culpable injury of life, body or health shall remain unaffected. This shall also apply to the mandatory liability in accordance with the Product Liability Law.

(5) The period of limitation with respect to claims based on defects amounts to 24 months, starting from the date of the passing of risk.

VII. Overall liability

(1) Any further liability for damages other than those provided for in § 6 shall be excluded - regardless of the legal nature of the asserted claim. This shall, in particular, apply to claims for damage resulting from culpa in contrahendo, due to other breaches of obligations or due to claims in tort for the compensation of property damage in accordance with § 823 BGB [German Civil Code].

(2) The limitation of customer's claims pursuant to para.(1) shall also apply, if the customer does not require damages but performance, and instead said performance asserts useless expenditure.

(3) Insofar as the liability for damages vis-à-vis us is excluded or limited, this shall also apply with respect to the personal liability for damage of our employees, members of staff, co-operators, representatives and vicarious agents.

VIII. Reservation of title

(1) We reserve the title to the goods until all payments resulting from the business relationship with the customer have been received. If the customer breaches the contract, in particular, in the event of delay of payment, we shall be entitled to take the goods back. If we take back the goods, this shall be considered as a withdrawal from the contract. After we have taken back the goods we shall be authorised to utilise them. The utilisation revenues must then be set-off with the customer's liabilities, less appropriate utilisation costs.

(2) The customer undertakes to treat the goods carefully. In particular, the customer shall be obliged to sufficiently insure the goods at their new value and at the customer's own expense against fire and water damage and theft. Insofar as maintenance and inspection work is necessary, the customer must carry out that work at the customer's own expense and in time.

(3) In the event of a seizure of property or other interventions of third parties, the customer must immediately inform us in writing so that we can take legal action pursuant to § 771 ZPO [Civil Code of Procedure]. Insofar as the third party is not in a condition to reimburse us the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the customer shall be liable for the incurred loss.

(4) The customer shall be entitled to resell the goods in an orderly business procedure, however, the customer already now assigns to us all claims, amounting to the final invoice amount (including VAT) of our claim, which accrue for the customer from the resale vis-à-vis the purchaser or third parties, regardless of whether the goods were resold with or without further processing. The customer shall remain entitled to collect this claim also following the assignment. Our right to collect the claim ourselves shall remain unaffected. However, we undertake to refrain from collecting the claim as long as the customer meets the payment obligations from the collected revenues, is not in delay of payment or, in particular, has not filed an application to open composition or insolvency proceedings, or cessation of payments is given. However, if this is the case, we can require that the customer informs us about the assigned claims and the respective debtors, provides all information necessary for the collection, hands over the necessary documents and informs the debtor (third party) about the assignment.

(5) Any and all processing and reorganisation of the goods by the customer shall always be considered to be carried out for us. In the event that the goods are processed together with objects which are not owned by us, we acquire co-ownership in the new object in relation of the value of the goods (final invoice amount, including VAT) to the other processed objects at the time of processing. With respect to the object arising through the processing, the same shall apply as to goods which were delivered conditionally.

(6) In the event that the goods are inseparably combined with other objects which are not owned by us, we acquire the co-ownership in the new object in relation of the value of the goods (final invoice amount, including VAT) to the other combined objects at the time of combining. In the event that the combining of the goods is carried out in such a way that the customer's object becomes the principal object, it is considered to be agreed that the customer assigns the proportional co-ownership to us. The customer holds the resulting sole ownership or co-ownership in safe custody for us.

(7) The customer shall also assign to us the claims for securing our claims against the customer which accrue vis-à-vis a third party by connecting the goods with real property.

(8) We undertake to release the securities we are entitled to upon request of the customer insofar as the value which can be realised from our securities exceeds the claims to be secured by more than 10 %. The selection of the securities to be released shall be in our responsibility.

IX. Trademark right

The customer is responsible for the licence of trademarks when dealing with third parties. We reserve the property and copy right for any and all illustrations, drawings, calculations and other documents. This shall also apply to such written documents which are identified as "confidential". The customer needs our explicit written consent to pass them on to third parties.

X. Cancellation charges

If the customer withdraws from the contract without just cause, or demands its cancellation, we shall have the right to cancel the contract; the customer shall be obligated at our discretion to pay either a fixed rate of damages of 10% of the gross invoice amount or compensation for the loss actually incurred.

XI. Financial standing

(1) The customer is obliged to disclose his financial circumstances whenever he is required to do so. If false information is relayed, especially concerning an application to open § 899 ff. ZPO insolvency proceedings, we have the right to withdraw from the contract.

(2) Since considerable advance performance is necessary for producing our goods, we have the right, if the clients' financial circumstances have worsened since closing of the contract and especially if the customer has been asked to take out a § 899 ff. ZPO insurance policy or if insolvency proceedings have been launched, we will then be entitled to demand payment for our advance performances. Should these not be paid within the delay, we are entitled, after issuing a warning, to withdraw from the contract.

XII. Additional conditions concerning Timber and Plastics processing

(1) Material provisions
If the customer makes the material available, it must be delivered free and on time with a quantity premium of at least 10%. If these conditions are not respected, delivery time will be lengthened accordingly. The customer will also have to carry any additional processing interruption costs.

(2) Standard production descriptions for quality and models are, providing we are working for a customer, our patterns, which we may show our customers upon request. Our referral to technical standards is for product description only and does not represent a legal guarantee.

(3) Overdelivery
We are not able to produce a precise number of pieces. Over and under-deliveries up to 10% are considered to be acceptable quantity variations.

XIII. Packaging and shipping

(1) Packaging costs are calculated between us and the customer. Postal and packaging charges will be invoiced separately. The choice of a transporting company is made according to conditions.

(2) The customer renounces his right to give back packaging materials.

XIV. Applicable Law, Jurisdiction

(1) The exclusive place of performance is Lohr am Main, if not otherwise specified.

(2) Insofar as the customer is a businessperson, a legal person, a public law entity or a special fund under public law, our commercial residence shall be the exclusive jurisdiction for any and all disputes arising directly or indirectly from this contractual relationship.

XV. Miscellaneous provisions / Venue / limitation of actions

(1) The laws of the Federal Republic of Germany shall apply to these business relationships and any and all legal relationships between the customer and us. The provisions of the UN Purchase Law shall not apply.

(2) The transmission of customer rights and obligations mentioned in the contract must benefit from our written consent in order to be valid

(3) All the customers' claims – regardless of legal reasons – prescribe after 12 months. In the case of wilful or fraudulent conduct as well as for claims regarding the Product Liability Act, legal delays apply

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